



**Local Chamber
Mannheim**
UPC_CFI_210/2023

Decision

of the Court of First Instance of the Unified Patent Court Local Chamber

Mannheim

announced on 22 November 2024

concerning EP 2 568 724

Plaintiff:

Panasonic Holdings Corporation - 1006, Oaza Kadoma, Kadoma-shi - 571-8501 - Osaka - JP
represented by attorney Christopher Weber

Defendant:

1)

Guangdong OPPO Mobile Telecommunications Corp Ltd - NO.18 Haibin Road, Wusha,
Chang'an Town, Guangdong Province - 523860 - Dongguan - CN

represented by RA Andreas Kramer

2)

OROPE Germany GmbH - Graf-Adolf-Platz 15 - 40213 - Düsseldorf - DE

represented by RA Andreas Kramer

STREITPATENT:

EUROPEAN PATENT NO. EP 2 568 724

ADJUDICATING BODY/CHAMBER:

Local Chamber Mannheim, Court of First Instance

CONTRIBUTING JUDGES:

This decision was issued by the presiding judge and rapporteur Prof. Dr Tochtermann, the legally qualified judge Böttcher, the legally qualified judge Brinkman and the technically qualified judge Loibner.

LANGUAGE OF PROCEDURE: German

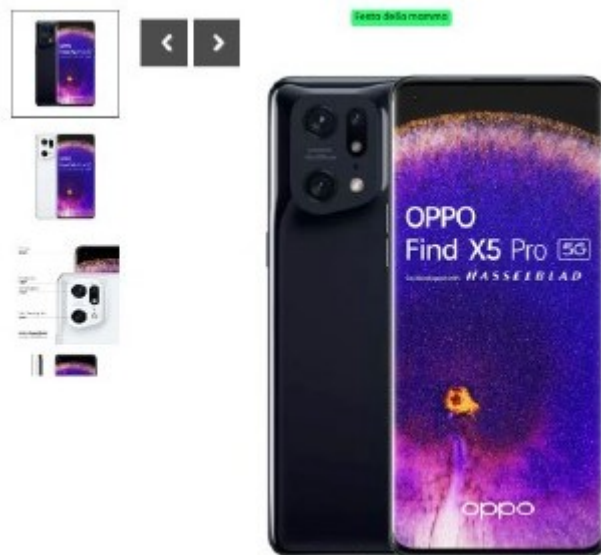
SUBJECT MATTER: Action for infringement and action for cancellation as well as FRAND counterclaim

ORAL NEGOTIATION: 7 and 8 October 2024

BRIEF PRESENTATION OF THE FACTS

1. The plaintiff is suing the defendants for an alleged infringement of the European patent EP 2 568 724 B1 ("patent-in-suit") relating to a radio communication device and a radio communication method. The patent-in-suit was filed on 13 August 2008 and claims the priority of JP 2007211548 of 14 August 2007 and the priority of JP 2008025535 of 5 February 2008. The notice of grant of the patent-in-suit was published on 17 December 2014. The patent in suit is in force, inter alia, in the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden. For these contracting states of the UPCA, the plaintiff is asserting claims for injunctive relief, recall, removal from the distribution channels and destruction, information/rendering of accounts, publication of judgement as well as determination of liability for damages and provisional damages.

2. The plaintiff considers the patent in suit (see below) to be essential for the 4G standard. Therefore, all of the defendant's 4G-capable mobile devices infringe the patent in suit, in particular the 4G-capable smartphones such as the OPPO Find X5 Pro



and the 4G-capable smartwatch



OPPO Watch 46 mm LTE - Smartwatch (AMOLED Display, GPS, Bluetooth 4.2, Wear OS by Google, VOOC Schnellladefunktion, 5 ATM), Schwarz
 Besuche den OPPO-Store
 4,1 ★★★★★ 86 Sternbewertungen

411⁰² €

Vorauszahlung der Importgebühren ausgewiesen -
 Preisangaben inkl. USt. Abhängig von der Lieferadresse kann die USt. an der Kasse variieren. Weitere Informationen.

Nutzen Sie die Monatsabrechnung und bezahlen Sie erst im nächsten Monat [Mehr erfahren](#)

Größe: 46mm

Farbe: Schwarz

Marke: OPPO

Modellname: Watch 46 mm (LTE)

SEI: eSIM

Farbe: Schwarz

Besonderes Merkmal: GPS

Form: Quadratisch

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Info zu diesem Artikel

- Das Dual-Burne-Display ist so konzipiert, dass Sie Ihre Inhalte aus jedem Blickwinkel bequem anzeigen können.
- Die Oppo Watch mit 46 mm kann rechtzeitig Regen oder Wasser

3. The plaintiff is the parent company of the Panasonic Group, which was founded in 1918. On 1 April 2022, the plaintiff changed its name from Panasonic Corporation to Panasonic Holdings Corporation.
4. Defendant 1. belongs to the OPPO Group and is headquartered in the People's Republic of China. Within the group, it is the company responsible for the mobile phone division. It distributes mobile phone products of the OPPO Group and maintains its European headquarters in Düsseldorf in Germany.
5. Defendant 2. also belongs to the OPPO Group. It was founded on 6 June 2019, is entered in the commercial register of the Düsseldorf Local Court under HRB 87507 and has its registered office at the same address as the defendant 1. has its European headquarters. It operates this OPPO European headquarters together with Defendant 1.
6. The plaintiff contacted the OPPO Group in July 2019 and has since been negotiating unsuccessfully with the first defendant on the conclusion of a FRAND licence agreement for the plaintiff's 4G patents. In the present case, the defendants are bringing a FRAND counterclaim against the plaintiff with the aim of concluding a FRAND licence agreement on the terms they consider to be FRAND on the basis of the court ruling.

MOTIONS BY THE PARTIES

7. With its **action for infringement**, the **plaintiff** is pursuing the following claims:

- I. It is established that the defendant has infringed European Patent No. 2 568 724 B1.

- II. The defendants are ordered to

cease and desist,

1. Radio communication devices

which can be configured to transmit a reference signal with a transmission bandwidth in a given system bandwidth, with control channels assigned to both ends of the same [system bandwidth] and the transmission bandwidth between the control channels, or to transmit reference signals with a low bandwidth with frequency hopping, and the radio communication devices comprise: an allocation unit configured to allocate the reference signals to frequency resources; a transmission unit configured to transmit the allocated reference signals,

in the Federal Republic of Germany, the French Republic, the Italian Republic, the Netherlands and the Kingdom of Sweden, or to place them on the market or use them, or to import or possess them for these purposes,

where

the transmission bandwidth varies in the given system bandwidth, and the allocation unit allocates the reference signals such that the reference signals are allocated frequency resources each having the small bandwidth which is invariable regardless of changes in the transmission bandwidth, the frequency resources being uniformly distributed in a frequency band of the transmission bandwidth in accordance with the change in the transmission bandwidth.

(direct infringement of device claim 1)

especially if

a large number of different transmission bandwidths can be configured in one system bandwidth.

(direct infringement of device claim 2)

and/or in particular if

the assigning unit assigns the reference signals to the frequency resources, wherein one of the frequency resources having the low bandwidth is a transmitting unit. (direct infringement device claim 3)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources into which a frequency band having the transmission bandwidth is evenly divided, wherein one of the frequency resources having the narrow bandwidth is a transmission unit. (direct infringement device claim 4)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources, the number of which is different depending on the changes in the transmission bandwidth, wherein one of the frequency resources with the low bandwidth is a transmission unit. (direct infringement device claim 5)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources, each of which has a different frequency band, one of the frequency resources with the low bandwidth being a transmitting unit.

(direct infringement of device claim 6)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources that cover the entire frequency band of the transmission bandwidth, one of the frequency resources with the low bandwidth being a transmission unit.

(direct infringement of device claim 7)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources by means of frequency hopping, whereby one of the frequency resources with the low bandwidth is a transmission unit.

(direct infringement of device claim 8)

and/or in particular if

the allocation unit allocates the reference signals to frequency resources that cover the entire frequency band of the transmission bandwidth by means of frequency hopping, whereby one of the frequency resources with the low bandwidth is a transmission unit.

(direct infringement of device claim 9)

and/or in particular if

the allocation unit allocates the reference signals to a plurality of resources which are frequency resources and which are different time resources, wherein one of the frequency resources having the low bandwidth is a transmitting unit. (direct

infringement device claim 10)

and/or in particular if

the allocation unit allocates the reference signals to a plurality of resources which are frequency resources and which are time resources differing by a certain time interval, wherein one of the frequency resources with the low bandwidth is a transmission unit.

(direct infringement of device claim 11)

and/or in particular if

which further comprises a receiving unit configured to receive control information associated with an assignment of the reference signals, wherein the assignment unit assigns the reference signals based on the control information.

(direct infringement of device claim 12)

2. Apparatuses suitable for performing a radio communication method which can be configured to transmit a reference signal with a transmission bandwidth in a given system bandwidth, both ends of the same control channels being assigned and the transmission bandwidth being between the control channels, or to transmit reference signals with a low bandwidth with frequency hopping

in the Federal Republic of Germany, the Federal Republic of Germany, the French Republic, the Italian Republic, the Netherlands and the Kingdom of Sweden,

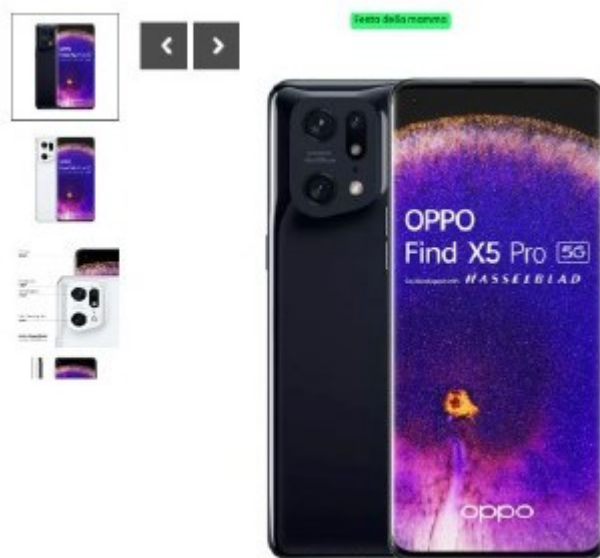
wherein the radio communication method comprises: the following steps:

assigning the reference signals to frequency resources; and transmitting the assigned reference signals, the transmission bandwidth varies in the given system bandwidth, and the reference signals are assigned to frequency resources each having the small bandwidth which is invariable regardless of changes in the transmission bandwidth, wherein the frequency resources are uniformly distributed in a frequency band of the transmission bandwidth according to the change in the transmission bandwidth.

(indirect infringement of procedural claim 13)

The defendants have infringed the patent by distributing 4G-enabled products in the territory of the Federal Republic of Germany, the French Republic, the Italian Republic, the Netherlands and/or the Kingdom of Sweden.

The 4G-capable products include, in particular, 4G-capable smartphones such as the OPPO Find X5 Pro



and 4G-enabled smartwatches, such as the 4G-enabled smartwatch



OPPO Watch 46 mm LTE - Smartwatch (AMOLED Display, GPS, Bluetooth 4.2, Wear OS by Google, VOOC Schnellladefunktion, 5 ATM), Schwarz

Besuche den OPPO-Store

4.1 ★★★★★ 86 Sternbewertungen

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Größe: 46mm
Farbe: Schwarz

Marke	OPPO
Modellname	Watch 46 mm (LTE)
Set	es ist
Farbe	Schwarz
Besonderes Merkmal	GPS
Form	Quadratisch

▼ Mehr anzeigen

Info zu diesem Artikel

- Das Dual-Burke-Display ist so konzipiert, dass Sie Ihre Inhalte aus jedem 90-Grad-Winkel bequem anzeigen können.
- Die Oppo Watch mit 46 mm kann rechtzeitig Regen oder Wasser

III. Orders the defendants to pay, at their own expense

1. to recall the products mentioned under No. II. from the distribution channels;
2. to permanently remove the products mentioned under No. II. from the distribution channels;
3. to destroy the products mentioned under No. II;

IV. The defendants are sentenced,

1. to provide the plaintiff, in a list structured for each month of a calendar year and according to infringing products in electronic form, which can be analysed with the aid of a computer, from 17 December 2014, with information on the products mentioned under No. II, on

- a) the origin and distribution channels of the products mentioned under No. II;
- b) the quantities delivered, received or ordered and the prices paid for the products mentioned under No. II;
- c) the identity of all third parties involved in the distribution of the products mentioned under No. II;

2. to disclose to the plaintiff its accounts to prove the information provided pursuant to No. IV.1. plus the information on the profit realised by providing the following documents for each month of a calendar year and for each infringing product in electronic form which can be analysed with the aid of a computer:

- a) Invoices - or, if these are not available, delivery notes - for the individual deliveries, whereby the respective deliveries are organised according to offer quantities,

The offer must include a breakdown of the offer times, prices of the goods offered and type designations as well as the names and addresses of the commercial recipients of the sales offers for all products sold or otherwise disposed of;

b) Evidence of the advertising carried out, including evidence of these advertising activities, breaking down the advertising carried out by advertising medium, its distribution, the distribution period and the distribution area;

c) Proof of costs, with a breakdown of costs by individual cost factors and the profits realised;

d) Invoices - or, if these are not available, delivery notes - and corresponding statements of all costs incurred, on which the defendants rely in calculating their profits;

the accuracy of which is audited and confirmed by a sworn auditor appointed by the plaintiff at the defendant's expense, whereby the auditor is obliged to maintain confidentiality vis-à-vis the plaintiff beyond the above-mentioned information;

V. The applicant is authorised, at the defendant's expense, to announce and publish the decision in whole or in part in the following public media: Frankfurter Allgemeine Zeitung, Handelsblatt newspaper, Le Monde newspaper, Les Échos newspaper, Corriere della Sera newspaper, De Telegraaf newspaper and Dagens Nyheter newspaper.

VI. It is established that the defendants are jointly and severally liable to compensate the plaintiff for any damage that Panasonic Intellectual Property Corporation of America has suffered as a result of actions pursuant to No. II. since 17 December 2014 and that the plaintiff has suffered since 29 July 2016 and will suffer in the future.

VII. The defendants are ordered as joint and several debtors to pay the plaintiff an amount of EUR 250,000.00 as provisional damages;

VIII. The defendants are ordered to pay the costs and expenses of the proceedings.

IX. The decision can be enforced as follows:

1. The orders mentioned under No. II.1 and II.2 are directly enforceable.

In the event of any infringement of this order, the defendants must pay a penalty payment of EUR 5,000 each.

2. The orders referred to in No. III, No. IV, No. VII and No. VIII are enforceable after the plaintiff has

a) has notified the court which part of the orders it intends to enforce and after the notification has been served on the defendant; and/or

b) the claimant has submitted a certified translation of the orders into the official language of the Contracting Member State in which enforcement is to take place and after the notification and, where applicable, the certified translation have been served on the defendant;

3. After the expiry of a period of 45 days after service pursuant to No. IX.2, the Defendants shall pay to the Court a penalty payment of EUR 2,000 per day of delay in the event of any breach of any of the orders referred to in No. III, No. IV, No. VII and/or No. VIII;

8. The **defendants** request that the applications in the **infringement action be dismissed**, that the defendants be provisionally awarded reimbursement of the costs of the infringement action and that the plaintiff be ordered to pay the costs,

In the alternative

make the enforcement of the decision subject to the prior provision of security by the applicant in an appropriate amount (Rules 352.1 and 354.2 of the Rules of Procedure), which may be provided in the form of a written, irrevocable, unconditional and unlimited guarantee from a credit institution authorised to do business in the territory of a Member State of the UPC, the amount of which is left to the discretion of the court,

allow the defendants to avert the enforcement of the decision by providing security, which may be provided by a written, irrevocable, unconditional and unlimited guarantee from a credit institution authorised to do business in the territory of a Member State of the UPC, without regard to the provision of security by the applicant (R. 9.1 Order).

9. In the context of the **action for annulment**, the **defendants** apply:

declare the European patent EP 2 568 724 B1 invalid in its entirety with effect for the contracting states of the UPCA in which the patent is validated [Federal Republic of Germany, France, Italy, the Netherlands and Sweden] (R. 25 RP);

provisionally award the defendants the reimbursement of costs for the action for annulment (R. 150.2 VerfO) and order the plaintiff to pay the costs in this respect as well.

10. The **plaintiff** requests that the counterclaim for a **declaration of invalidity be dismissed** or, in the alternative, that the patent be maintained in amended form with regard to claim 1 and claim 13 and that the counterclaim for invalidity of the patent be dismissed as unfounded and that the defendants be ordered to pay the costs of the counterclaim. With regard to the wording of the request for amendment, reference is made to the pleading of 21 March 2024 together with the annexes.

11. In the context of their **FRAND counterclaim**, the defendants lastly request the following:

Main application version according to replica counterclaim FRAND of 19 August 2024 (filed pursuant to Rule 9 VerfO in workflow App_47681/2024):

It is requested,

I.1 order Panasonic to accept the licence agreement offer from Oppo [...] as shown in Annex VB-FC14 (confidential),

I.2 in the alternative, to order Panasonic to submit a licence agreement offer to Oppo with the content as shown in Annex VB-FC14 (confidentiality required),

I.3 in the further alternative, to order Panasonic to submit a licence agreement offer to Oppo with the content as shown in Annex VB-FC16 (confidentiality required),

whereby, in the alternative, an amount to be determined by the court between [...] is to be entered in the yellow place in point (1), an amount to be determined by the court between [...] is to be entered in the green place in point (2), and the lump sum to be entered in the blue place there results as follows: [...],

In the alternative, a different amount, determined by the court to be fair, reasonable and non-discriminatory, is to be set at the yellow and green positions in points (1) and (2) respectively of Annex VB-FC16 and the lump sum provided for there in blue is calculated in accordance with the calculation method specified in the above paragraph;

II.1 in the alternative to the applications in point I and in the event that none of the applications in point I is granted, declare that Oppo is entitled to

has a licence to Panasonic's patents essential for 3G and 4G standards on fair, reasonable and non-discriminatory terms (FRAND),
and to determine the licence rate to be paid by Oppo for the use of these patents in the territory of the EPC Contracting States (the EP Territory), such FRAND licence rate for the EP Territory being

- [...],

- or, in the strongest alternative, another rate considered by the court to be fair, reasonable and non-discriminatory;

II.2 subject to the existence of a FRAND licence agreement, order Oppo to pay, as of the date of the Judgment, as a lump sum [...], which lump sum shall be [...], or in the alternative between [...] and [...], or in the further alternative a lump sum determined by the Court to be fair, reasonable and non-discriminatory;

II.3 To require Panasonic to cooperate fully to obtain a FRAND licence on the terms set by your court;

III.1 further in the alternative, in the event that neither the applications under I. nor II. are granted,

(a) declare that Oppo is entitled to a licence to Panasonic's patents essential to the 3G and 4G standard on fair, reasonable and non-discriminatory terms (FRAND);

(b) declare that the licence conditions, alternatively the licence fees, as contained in Panasonic's offer of [...] for a licence from Oppo to Panasonic's patents essential for the 3G and 4G standard (Annex VB- FC15) are not FRAND;

(c) that Panasonic has abused a dominant market position;

(d) declare that the terms of a licence, or alternatively the licence fees, as contained in Oppo's counter-offer of [...] for a licence by Oppo to Panasonic's patents essential to the 3G and 4G standard (Exhibit VB-FC14) are FRAND;

(e) order Panasonic to submit a FRAND counter-offer to Oppo, which would not the following FRAND licence rate for the EP territory: [...], or in the alternative [...], or in the further alternative the amount which the court considers to be FRAND in the circumstances of the present case;

IV. Order Panasonic to pay Oppo the reasonable and proportionate legal costs and other expenses incurred by Oppo by way of an interim order pursuant to Rule 150(2) of the Rules of Procedure, with the amount to be determined at a later date.

The version of the application filed with the "Counterclaim for determination of a FRAND fee for the EPC area" dated 22 December 2023, which is still being pursued in the alternative, reads as follows:

It is requested,

(i) declare that Oppo is entitled to a licence to Panasonic's standard-essential patents for the 3G and 4G standards on fair, reasonable and non-discriminatory (FRAND) terms; and

(ii) explain what the essential terms of such FRAND licence are, including at least the rate Oppo has to pay for the use of such patents in the territory of the EPC Contracting States (the EP Territory); and

(iii) declare that the FRAND licence rate for the EP territory is [...], or in the alternative [...], or in the further alternative the amounts which the Court considers to be FRAND in the circumstances of the present case;

(iv) subject to the existence of a FRAND licence agreement, Oppo,

a. from the date of the judgement as a lump sum [...], the lump sum being [...], or in the alternative [...], or in the further alternative a lump sum to be determined by the court;

b. to pay this licence rate to Panasonic for each device sold since the date of the decision;

(v) To require Panasonic to cooperate fully to obtain a FRAND licence on the terms set by your court;

in the alternative,

(vi) declare that Oppo is entitled to a licence for Panasonic's standard-essential patents for the 3G and 4G standards on fair, reasonable and non-discriminatory terms (FRAND);

(vii) declare that the licence terms for Panasonic's patents essential to the 3G and 4G standards, as contained in Panasonic's offer described in the body of this submission, are not FRAND;

(viii) that Panasonic has abused a dominant market position;

(ix) find that the terms of a licence for Panasonic's patents essential to the 3G and 4G standards, as contained in Oppo's counter-offer described in the body of this brief, are FRAND;

(x) Order Panasonic to submit a FRAND counter-offer to Oppo showing the following FRAND licence rate for the EP Territory: [...], or in the alternative [...], or in the further alternative the amount which the Court considers to be FRAND in the circumstances of this case;

and in any case

(xi) Order Panasonic to pay Oppo's reasonable and proportionate legal costs and other expenses by way of interim measures pursuant to Rule 150(2), the amount to be determined at a later date.

The plaintiff considers the amendment to the action in the reply to the FRAND counterclaim to be late, the amendment is not admissible, the defendant's changes to the plaintiff's draft contract of 22 December 2023 are not FRAND-compliant.

The plaintiff

"recognises that a willing license seeker is entitled to a licence for the standard-essential patents for the 3G and 4G standards on fair, reasonable and non-discriminatory (FRAND) terms" (statement of 22 March 2024)

and applied for,

- I. otherwise dismiss the counterclaim, as the defendants are unwilling to take out a licence;
- II. order the defendants to pay the costs,
 1. to pay the costs and expenses of the proceedings;
 2. provisionally reimburse the costs.

In the alternative,

In the event that the counterclaim is admissible and the court - contrary to the plaintiff's view - is of the opinion that the defendants acted as willing contracting parties in the negotiations at issue with the plaintiff, the plaintiff requests the court to rule on the counterclaim,

III. declare that a licence justifying the defendant's infringing acts of use of EP 2 568 724 is a worldwide licence to the plaintiff's 3G and 4G (multimode) portfolio and that a royalty rate for such a licence of [...] is fair, reasonable and non-discriminatory;

IV. further in the alternative to the request under III. to explain which licence justifies the defendant's infringing acts of use of EP 2 568 724 and which licence rate per 3G/4G (multi-mode) device is fair, reasonable and non-discriminatory (FRAND);

V. order the defendants to pay the costs,

1. to pay to the plaintiff a licence in the amount of [...] for the past and the future for 3G/4G (multi-mode) devices sold and not licensed by the defendants, alternatively for 3G/4G (multi-mode) multi-mode devices sold and not licensed in the "EP", "JP" and "US" territories.

2. in the alternative under V.1. to pay to the plaintiff for 3G/4G (multi-mode) devices sold and not licensed by the defendants, in the alternative for 3G/4G (multi-mode) devices sold and not licensed in the "EP", "JP" and "US" territories, a licence in the amount as requested under IV. for past and future acts of use.

VI. also dismiss the further counterclaim; in

the alternative to VI.

VII. to oblige the counterclaimant 1),

1. to accept the licence agreement offer of the counter-defendant dated [...] in the version of Annex KAP FRAND WK 19 - Strictly Confidential;

In the alternative to item VII.1,

2. to submit a licence agreement offer to the counter-defendant in the version of Annex KAP FRAND WK 19 - Strictly Confidential;

Further in the alternative to item VII.2,

to submit a licence agreement offer to the counter-defendant in the version of Annex KAP FRAND WK 19 - Strictly Confidential, with the proviso that clauses 4.1 and 4.2 are replaced as such as set out below:

[...]

whereby further in the alternative to item VII.3:

4. [...];

VIII. in the alternative to the motions in items VII.1 to VII.4 and in the event that none of the motions therein should be granted,

1. declare that a willing licence seeker is entitled to a licence to the counter-defendants' patents essential to the 3G and 4G standards on fair, reasonable and non-discriminatory (FRAND) terms, and determine the royalty rate that a willing licence seeker comparable to the counter-claimants in all other respects except willingness to licence must pay for the use of those patents worldwide, such FRAND royalty rate being [...],
- or, in the alternative, such other rate as the court deems fair, reasonable and non-discriminatory

2. subject to the existence of a FRAND licence agreement, to oblige the counterclaimants to pay the licence rate from VIII.1 as a lump sum from the date of the judgment [...];

3. in the alternative, pay a lump sum determined by the court to be fair, reasonable and non-discriminatory;

IX. further in the alternative in the event that neither the applications under VII. nor VIII. should be granted,

1. declare that the counterclaimants have not behaved in a FRAND-compliant manner;

2. declare that the licence conditions, or alternatively the licence fees, as contained in the offer from the defendant dated [...] in the version of Annex KAP FRAND WK 19 - Strictly Confidential - for a licence to the defendant's patents essential for the 3G and 4G standard are FRAND;

3. declare that the conditions of a licence, alternatively the licence fees, as contained in the counter-offer of the counterclaimant 1) dated [...] in the version of Annex VB-FC 14 - Strictly Confidential for a licence of counterclaimants to the counter-defendants' patents essential for the 3G and 4G standard are not FRAND;

X. condemn the counterclaimants,

1. also to bear the further costs and expenses of the proceedings incurred as a result of the extension of the action;

2. also provisionally reimburse the further costs.

12. The defendants consider these applications to be inadmissible and request that they be dismissed.

FACTUAL AND LEGAL POINTS OF CONTENTION

Injury discussion

13. According to the plaintiff, the defendants directly infringe claim 1 of the patent in suit and indirectly infringe claim 13 by offering 4G-capable products, in particular 4G-capable mobile phones and smartwatches (attacked embodiments) in the Federal Republic of Germany, in the

French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden. According to the applicant, the contested embodiments fulfil all the features of claim 1 when used in the 4G network and use a method according to claim 13.

14. The defendants, on the other hand, are of the opinion that the contested embodiments do not realise features 1.1, 1.3.1, 1.3.2 and 1.3.2 in particular. The plaintiff misunderstands the term "transmission bandwidth". Contrary to the applicant's view, the transmission bandwidth is to be understood as that bandwidth within a given system bandwidth which is located between the control channels and which is therefore available for the transmission of reference signals and user data. The broadband SRS signal referred to in the claim extends over this transmission bandwidth, which is therefore defined by the system bandwidth minus the bandwidth required for the PUCCH. The same applies to the narrowband SRS, which are distributed by means of frequency hopping. Contrary to the applicant's opinion, however, the transmission bandwidth is not defined by the beginning of the first SRS signal transmitted in the bandwidth to the end of the last SRS signal transmitted in the bandwidth, i.e. the area actually covered by the SRS signals. This variance of the transmission bandwidth is then also addressed in feature 1.3.1.

The plaintiff has not been able to show on the basis of the standard that the reference signals are assigned in accordance with feature 1.3.2 in such a way that the reference signals are assigned to frequency resources, each of which has the low bandwidth that is invariant regardless of changes in the transmission bandwidth. This is denied by the defendants with the argument that in the standard a change in C_{SRS} can cause a change in m_{SRS} and thus a change in the bandwidth of the reference signal and thus the bandwidth of the reference signal is not fixed regardless of C_{SRS} .

In particular, the SRS signals could not be distributed evenly in the transmission bandwidth in accordance with feature 1.3.3 under the standard. After the implementation by the standard, the prior art

known and disadvantageous gaps between the control channels and the frequency ranges actually covered by the SRS signals. Finally, the defendants also pointed out that the m_{SRS} and c_{SRS} parameters addressed by the plaintiff are only assigned semi-statically and that the adjustment is only possible in 80ms intervals at most (duplicate technology para. 83 et seq.). On the other hand, the PUCCH changes every millisecond and the data assigned to the PUCCH in each subframe is calculated by the terminal device from data that it received from the base station in the downlink only 4 milliseconds before the respective subframe, which is why the LTE standard relied on excludes an adaptation of the (semi-) static SRS configuration to the rapidly and dynamically varying PUCCHs.

15. The defendants also criticise the plaintiff's submission on the acts of infringement of which the defendants are accused as being too unsubstantiated. In particular, the defendants had already withdrawn from the German market some time ago.

16. The legal consequences sought by the plaintiff are too far-reaching. In particular, a cease and desist order was disproportionate and, moreover, there were antitrust reasons for the award (see below). The threat of a penalty payment raises concerns. It was already too high and therefore disproportionate and too vague with regard to actions other than sales. The requests for recall, removal from the distribution channels and destruction were already too vague and also disproportionate. The requested information was too broad, in particular because it was only to be directed at the information necessary for a calculation of damages by way of licence analogy, because the claim for damages was limited to this for reasons of antitrust law. A claim for disclosure of the books does not exist anyway and is the subject of separate proceedings according to the rules of procedure. There was no sufficiently substantiated interest in publishing the judgement. There is a lack of evidence for the award of provisional damages.

FRAND objection

17. The defendants argue that the assertion of the claim for injunctive relief and the other forward-looking claims under the patent are excluded because they are precluded by antitrust law.
18. Contrary to the plaintiff's view, the FRAND objection should not only be based on the individual patent in suit, but on a comprehensive licence. Article 6 (1) sentence 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) already requires that the defendant be able to defend itself comprehensively, and it also follows from European law that the comprehensive FRAND defence must be admitted.
19. The infringement notice required by the case law of the ECJ is already lacking, as shown by the European Commission's amicus curiae submission in the proceedings before the Munich Higher Regional Court 6 U 3824/22 Kart (Annex VB-F 45). It is necessary that the infringement notice formally indicates the nature and type of infringement in the cover letter itself - a reference to external documents is not sufficient.
20. The declaration of willingness to take a licence was to be understood solely as a formal step at the start of the negotiations, as the European Commission also correctly pointed out that this step should not be confused with the counter-offer, which was only to be examined later. The willingness should also not be assessed in relation to the later offers and counter-offers. The Commission makes it clear in its submission that the plaintiff's offer must first be examined to determine whether it is FRAND. This is also in line with the view of the Düsseldorf Regional Court in its order for reference to the ECJ, which was previously finalised due to the termination of the proceedings.
21. The plaintiff's behaviour was an abuse of rights, as there was no written FRAND offer from the plaintiff until the statement of defence. An offer by the plaintiff was first made in the e-mail of [...] (Annex VB-F 20

and 21) were included. There was therefore a lack of a specific written licence offer before the action was brought, which, in the correct view of the European Commission, could not be made up for in the ongoing infringement proceedings. Until the orders for reference were issued in the present proceedings, no settlement licences had been made available to the defendants which would have enabled a review of possible discrimination against the defendants. The plaintiff had a burden of proof in this respect, which it did not fulfil. It had initially approached the defendants with exaggerated licence claims without disclosing the basis of calculation or making a comparison with other licensees. [...]

22. The plaintiff had also [...].

23. With regard to the economic assessment of the plaintiff's licence amount expectations, the defendants refer to the expert opinion of their economic expert and explain it (Annex VB-F 18). [...].

24. This imbalance is also revealed by a comparison with [...] and indicators from published UK High Court decisions (InterDigital v Lenovo ([2023] EWHC 539 (Pat)) and Optis v Apple ([2023] EWHC 1095 (Ch)). [...]

25. The initial expert opinion was then confirmed in a supplementary expert opinion following the submission of settlement licence agreements by the plaintiff in the meantime. In this respect, reference is made to the presentation of the FRAND counterclaim and the FRAND duplicate.

26. In addition to these economically derived arguments, the defendants argue in legal terms that the plaintiff is abusing its dominant position on the licensing market contrary to Art. 102 TFEU. The use of the 4G standard is essential in order to survive on the market. The telecommunications providers had switched off 2G and 3G networks in Europe and 4G backward compatibility was also indispensable for 5G end devices due to the still insufficient network coverage of the 5G network.

27. The claim to a licence also follows from the plaintiff's ETSI-FRAND declaration for the patent families of the patent in suit.
28. The plaintiff was obliged to equalise the existing information gap with the defendants and therefore to explain the content of its offer so that the implementer could examine it. The plaintiff did not fulfil this obligation.
29. The perceptibility of the impairment, which the plaintiff describes as significant with reference to the MEO decision of the ECJ, is irrelevant.
30. The defendant's counteroffer [...] was FRAND. [...] It was wrongly rejected by the plaintiff [...] (Annex VB-F 40).
31. The **plaintiff, on the other hand, argues** that the defendants cannot invoke the compulsory licence defence under antitrust law because they are not willing to take a licence. They had never clearly declared their willingness to take a licence, nor had they provided information or security. The defendants' group of companies had also never sufficiently analysed the content of the plaintiff's contractual offers and technical information and had deliberately delayed the technical exchange and always requested new claim charts without then adequately dealing with them.
32. With reference to the case law of the Court of Justice of The Hague (judgment of 24 December 2019, 200.233.178/01 - Philips/Wiko), the plaintiff believes that it is not required under European law for the SEP holder to justify why it considers its offer to meet FRAND criteria - in particular, no confidential settlement licence agreements should be made available at this stage. Furthermore, it is not necessary to have a fully formulated offer that is ready to be signed; rather, it is sufficient if the key commercial points are included and it can form the starting point for negotiations on further details. If the user does not agree, he is in any case entitled to react and to object.

and must submit a counter-offer. Information must be provided and security must be provided as soon as the SEP holder has rejected the counter-offer of the infringer who is already using the invention. According to the case law of the ECJ, a third-party determination can only be considered by mutual agreement; in particular, the determination of content by a state court is not a third-party determination within the meaning of ECJ case law.

33. A sufficient infringement notice covering the patent-in-suit had been sent [...] before the action was filed (Annex KAP FRAND 1 and 2). In addition, claim charts had been sent in any case for family members of the patents-in-suit, specifically also for the patent-in-suit [...]. The defendants then only stated that they wanted to enter into negotiations, which was insufficient.

34. The plaintiff's first offer [...] had already been explained and FRAND.

35. The plaintiff had rejected a lump-sum counter-offer from the defendant [...], submitting a new offer (VB-F4), without any information having been provided thereafter or security having been provided - at least once in the amount of the lump sum that the defendant itself considered to be FRAND. Moreover, the counter-offer had been delayed [...]. The fact that the defendant did not even provide its own expert with its own figures, but had him provide an expert opinion solely on the basis of the IDC data, showed that the figures could not be regarded as information. The IDC data is also not readily verifiable for the plaintiff because this requires the registration of a user account and the payment of considerable fees.

36. In their calculations, the defendants assumed that the plaintiff's share of the LTE standard was inaccurate and made up out of thin air. Conversely, on the basis of information from three different independent sources, the plaintiff had shown that the defendants' alleged sales figures were inaccurate.

37. [...].

38. The defendants wrongly took the view that the plaintiff's offers did not fall within the FRAND corridor. [...].

39. All of the applicant's offers are FRAND, [...].

40. [...].

41. The fact that the applicant's offers were FRAND-compliant was also demonstrated by the comparison with the applicant's third-party licences [...] submitted in response to an order for production.

42. [...].

43. Moreover, the defendants had not argued that the acceptance of the plaintiff's allegedly FRAND-infringing licence offers was tangible.

44. The defendant's counter-offers were clearly not FRAND. [...].

45. [...].

46. [...].

47. The defendant's previous counter-offers were also not FRAND.

FRAND counterclaim

48. In addition to their statement of defence and the counterclaim for a declaration of invalidity of the patent in suit, the defendants submitted a separate statement of 21 December 2023.

"Counterclaim for determination of a FRAND licence fee for the EP area".

49. The defendants argue that the UPC has jurisdiction under Article 32(1)(a) UPCA for this counterclaim concerning a licence. The aim of the counterclaim is a FRAND

licence.

licence between the parties in relation to the plaintiff's portfolio of standard-essential European patents for 3G and 4G-capable mobile devices and the determination of the licence rate to be paid for this. The licence rate thus determined for the EP territory should then also apply to the USA and Japan. For the rest of the world, the defendants decided to have the FRAND rate determined by a Chinese court, where the majority of production and sales take place. This regional division is also reflected in the parties' previous negotiation history. The request to set a FRAND rate is also justified by the timing of the proceedings, in particular in view of the parallel proceedings pending in the UK to set a FRAND rate with Xiaomi.

50. On the basis of the plaintiff's ETSI declaration pursuant to Art. 6.1 ETSI IPR Policy, which also covers the patent in suit, and the French law applicable under it, the defendants have an enforceable claim as beneficiaries to the conclusion of a FRAND licence.

51. The licence rate offered by the plaintiff does not comply with FRAND conditions, as the expert opinion of the defendant's private expert shows in detail. After the establishment of the confidentiality regime in the present proceedings, the defendants submitted settlement licence agreements (Annexes VB-F 19 and 20) used in the private expert opinion (App_15307/2024) in a submission dated 21 March 2024, without the need for an initially requested submission order to substantiate their submission.

52. The rapporteur provided guidance on the FRAND counterclaim in the orders of 31 January 2024 (ORD_5505/2024) and 27 June 2024 (ORD_38680/2024).

53. The defendants have - in addition to their submission in the counterclaim and in response to the questions raised by the rapporteur in the orders of 31 January 2024 and 27 June 2024 - made further submissions. In particular, the defendants clarify that they are bound by a FRAND provision of the

want to be bound by the judgement of the court. For this reason, the defendants expressly formulated applications directed at performance and pursued applications directed at a declaratory judgement in the alternative. This is expressed in particular in the main claim under I., which seeks to oblige the plaintiff to accept the defendant's counter-offer of [...] (VB-FC 14), which the plaintiff [...] had rejected (VB-FC 18). For this purpose, a bank guarantee was provided to cover the amounts owed (VB-FC 19), which is now being served. Information on acts of use had been provided on the basis of the IDC data already available to the plaintiff, which were analysed in the expert reports (VB-FC 11 and 13). This counter-offer was essentially based on the contractual terms and conditions from the plaintiff's draft contract; modifications had only been made in three points, which is why the remaining contractual terms and conditions should, in the defendant's view, be beyond dispute between the parties. [...]. The defendants had a claim to acceptance of this offer, which was pursued with the main claim I.1 directed at performance. This is intended to oblige the plaintiff to accept the defendants' offer. The plaintiff cannot counter this by arguing that FRAND is a corridor and therefore there can be no claim to the conclusion of exactly one specific contractual offer.

54. Conversely, the defendants also made a binding commitment to accept an offer from the plaintiff (VB-FC 20) if a decision is made in accordance with motions I.2 or .3. In particular, motion I.3 takes into account that the defendants have also brought another proceeding for the determination of the FRAND rate for the rest of the world (in addition to the determinations asserted here for the EP states, the USA and Japan) before the Beijing Intellectual Property Court in China. The defendants also undertook to accept the further (partial) licence rate set there.

55. Such a division of the licence amount provisions is also appropriate. It is a worldwide licence in which only the determination of the amount is entrusted to the respective courts closest to the subject matter - once to the UPC for the EP territory, Japan and the USA, once to the court in Beijing for the rest of the world [...].

56. According to the defendant, the FRAND counterclaim was brought independently of the infringement action. It is not dependent on the fact that the patent in suit is infringed and legally valid. Moreover, the subject matter of the counterclaim goes far beyond the subject matter of the patent infringement action because the counterclaim is directed to a global portfolio licence. The fact that the UPC is competent for the FRAND counterclaim is not in dispute between the parties in terms of argumentation; moreover, the plaintiff did not raise an objection under Rule 19 of the Rules of Procedure.

The plaintiff wrongly accuses the defendants of unwillingness to license, inadequately analyses the defendants' expert report and does not make the manner of "unpacking" the submitted settlement licence agreements sufficiently transparent. Conversely, the defendant's further expert report, which now analyses the submitted settlement licence agreements, confirms that the plaintiff's offer is outside the FRAND corridor.

57. The conclusions drawn by the defendant's private expert were also substantiated after the plaintiff submitted the three settlement licence agreements. [...].

58. [...]

59. [...]

60. [...]

61. [...].

62. The plaintiff's legal views on the ETSI FRAND declaration are misguided, as this gives rise to an enforceable claim to a FRAND licence and direct performance. The defendants are also favoured as parties willing to obtain a licence.

63. The applicant's claims in its response to the FRAND counterclaim are inadmissible.

64. The rapporteur has received a letter from the UK High Court, Just. Richard Meade, which has reached the local chamber and informs about the planned proceedings before the High Court (ORD_44583/2024).

65. Finally, the defendants pursued the counterclaim for determination of a FRAND fee, which was filed together with the statement of defence and the action for annulment, with the above-mentioned amended applications. The amended version of the application was admitted by the judge-rapporteur. They have stated that they will also continue to pursue the originally filed version of the application if the amended applications cannot be granted. These are therefore reproduced as a further group of auxiliary motions.

66. The applicant acknowledges that a licence seeker willing to obtain a licence is in principle entitled to a FRAND licence relating to the 3G and 4G standard. This can be derived from Art. 102 TFEU or from the ETSI declaration. However, the defendants are not willing to grant a licence. Therefore, there was already no need for legal protection for the FRAND counterclaim. It was primarily incumbent on the defendants to take all necessary steps out of court to acquire a licence - recourse to the courts was not permissible beforehand. It follows from the ETSI IPR Policy that there is an obligation to enter into bona fide negotiations on the conclusion of a FRAND licence. This was not the case with the defendants. Nothing else follows from Art. 102 TFEU either. The lack of willingness to take a licence was already evident from the fact that they had neither provided information nor security.

67. The licence justifying the unlawful acts of use is solely a worldwide portfolio licence, and the defendant's argumentation in this regard is inherently contradictory. The UPC is not only competent with regard to counterclaimed, already existing licences, but also for counterclaims directed at licences yet to be granted. The counterclaim can only be directed at a licence to the respective patent in suit, insofar as the counterclaim, on the other hand, concerns licences to the

portfolio for the entire area of the EPC, the counterclaim is in any case partially inadmissible.

68. The defendants would neither have a claim to the determination of a complete licence agreement by the court, nor to a specific FRAND fee, because FRAND is a corridor - therefore the ETSI declaration does not give rise to such a concretely determinable claim to a specific form. In any case, the ETSI declaration is not a binding offer, but only a contractual promise - the contract, however, is a separate legal transaction. The EPG is also not a third party appointed to determine the licence fees within the meaning of the case law of the ECJ in *Huawei v. ZTE* (para. 68).

69. The requests initially made in the counterclaim were also too vague, unlike the requests made by the plaintiff under III - V in the present counterclaim.

70. In its reply to the FRAND counterclaim, the plaintiff also complains that the defendants did not introduce their submission on their private expert opinions into the proceedings in writing, but referred inadequately to the party's expert opinion, which was insufficient.

71. The present proceedings to determine a FRAND licence are now in conflict with a FRAND determination procedure initiated before the national court in Milan, Italy, by a distribution partner of the defendant exclusively responsible for Italy.

72. The defendant's licence offer of [...] is not FRAND for the simple reason that it proposes the allocation of the FRAND provision between different courts, which is not FRAND-compliant. The determination of a worldwide FRAND rate is appropriate.

73. [...]

74. The security provided by the defendant was not appropriate and was provided approximately three years too late, [...]. The amount of the security offered was also too low and linked to conditions that would be unreasonable in the event of insolvency, because it is neither possible for an administrator to conclude a licence agreement with certainty nor is a legally binding court-ordered FRAND rate guaranteed in the event of insolvency.

75. Information is still not provided, the IDC data is insufficient.

76. The defendant's expert opinion is methodologically flawed, [....].

77. [...].

78. [...].

79. The defendant's settlement licence agreements were already irrelevant and, moreover, they were used incorrectly by the defendant's expert.

With regard to the further details of the facts of the case and the matter in dispute, reference is made to the pleadings submitted together with the annexes.

REASONS FOR THE DECISION

Responsibility

80. The jurisdiction of the Local Division Mannheim of the Unified Patent Court for the infringement action and revocation counterclaim arises from Art. 31 UPCA in conjunction with Art. Art. 71b No. 1 Regulation (EU) 1215/2015, Art. 32(1)(a), (e) UPCA and Art. 33(1)(a) UPCA. The

According to the substantiated submission of the plaintiff, the defendants also committed the infringing acts on the territory of the Federal Republic of Germany. The defendants have withdrawn their objection to jurisdiction - albeit under protest - at the oral hearing after the adjudicating body had pointed out that the infringement was probably committed in the territory of the Federal Republic of Germany.

The court has withdrawn the contradiction that exists between, on the one hand, considering the court to have no jurisdiction in principle and, on the other hand, nevertheless requesting the determination of a FRAND rate by this court, which is considered to have no jurisdiction, in connection with the antitrust dispute between the parties. The Local Court of Mannheim also has jurisdiction for the FRAND counterclaim (see below).

Formalities of the patent in suit

81. The plaintiff bases the claims it is pursuing with the infringement action on the European patent EP 2 568 724 B1 ("patent in suit") relating to a radio communication device and a radio communication method, which was filed on 13 August 2008 and claims the priority of JP 2007211548 of 14 August 2007 and the priority of JP 2008025535 of 5 February 2008. The reference to the grant of the patent in suit was published on 17 December 2014. The patent in suit is in force, inter alia, in the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden.

Technical context of the patent in suit and problem definition

82. The patent in suit deals with a solution to a technical problem in the context of the LTE standard. The parties agree in describing the specific problem in that the patent in suit deals with the uplink signal traffic from a radio communication device to the network in a radio cell. In particular, the application case is examined in which such a device is not located in the core of the radio cell, but in its peripheral area. The patent in suit describes it as known that the energy available for the transmission of signalling decreases and transmission losses occur if the communication device is located at the edge of the cell. The problems described also arise in particular with regard to reference signals, which serve to estimate the channel quality in the uplink on the network side (also known as SRS (Sounding Reference Signals) signals). In addition, the reference signals are used to estimate the time offset between the base station and mobile station. The

It is known to those skilled in the art that the reference signals must have a certain minimum size in order to be useful for assessing the time offset and therefore must not be only 1 RB (resource block) in size. This is addressed by the patent in suit in section [0005], where it refers to a certain minimum size of the reference signal. In the following, the patent-in-suit concentrates on the estimation of the channel quality in the uplink, which is to be determined on the basis of the SRS signals. From this dependence of the channel quality and transmission and energy losses on the location of the user equipment (UE), it is already clear to the skilled person that the signalling referred to is not to be considered generally in the abstract, but with regard to the specific UE. Accordingly, the patent in suit describes that a UE which is located in the core of the radio cell has sufficient energy to transmit an SRS signal which is designed as a wideband signal (section [0004]). If this energy is not sufficiently available, narrowband SRS signals are used for channel estimation. From this context, the person skilled in the art understands that the corresponding tuning and arrangements are carried out on the network side and not by the UE itself, because only the network is able to make the necessary decisions regarding the optimum configuration and the resulting signalling in the respective specific application situation on the basis of the signals transmitted by the UE in the uplink.

83. The patent in suit further describes that in the LTE standard, a PUCCH (Physical Uplink Control Channel) is located at both ends of the system band by means of frequency multiplexing. The SRS signals would therefore be sent in the system bandwidth minus the PUCCH (section [0006]). The width of the control channels is variable depending on the amount of control data that needs to be handled. Therefore, the SRS transmission bandwidth also varies with the variance of the control channels. Here, the patent in suit defines in section [0007] that it refers to the frequency resources used by a single SRS signal as the SRS bandwidth and the majority of transmitted SRS signals as the SRS transmit bandwidth.

84. The patent in suit sets itself the technical task of offering a solution to the problem that the SRS transmission bandwidth varies with the change in the bandwidth of the PUCCH channels. However, the changing bandwidth, in which the user data is transmitted together with the SRS signals in the PUSCH (Physical Uplink Shared Channel) channel, should also enable the best possible estimation of the channel quality by means of narrowband SRS signals. In the state of the art, the problem here is that the SRS signals can overlap with the PUCCH channels as the bandwidth changes, which leads to signal losses. The skilled person is aware that signal losses in the control of the connection in particular must be prevented. For this reason, the PUCCH channels in LTE are also arranged at the two ends of the system bandwidth and not in the centre, where collisions are more likely. In order to avoid interference between the SRS signals and the PUCCH channels, the patent in suit describes as known solutions either to restrict the transmission of SRS signals from the outset only to the band range that remains when the PUCCH occupy the maximum bandwidth defined on the network side (cf. section [0009] and Figure 2). However, this solution has the disadvantage that larger areas of the band in which the SRS signals and user data can be transmitted are not covered by the SRS signals if the PUCCH do not have the maximum size, but only have a lower utilisation. This would reduce the quality of the estimation of the transmission quality. Conversely, if the minimum size of the PUCCH is assumed, interference with the SRS signals occurs (Figure 3A and B).

85. Another known solution was to stop the transmission of the SRS signal if the SRS overlapped with the PUCCH. However, this would again result in an area that was not covered by an SRS signal. This again reduces the quality of the estimation of the channel quality (see section [0011] and Figures 4A and 4B). Both approaches therefore mean that a larger range of the bandwidth that is required for the best possible channel quality estimation under the given boundary conditions, under which only narrowband SRS can be used by means of the

frequency hopping, should be covered, are not covered and thus the quality of the estimation deteriorates.

86. To solve this problem, the patent in suit proposes a radio communication device according to claim 1 and a radio communication method according to claim 13. The features of claim 1 can be summarised as follows:

1.	Radio communication device (200)
1.1	The radio communication device which can be configured to transmit a reference signal with a transmission bandwidth in a given system bandwidth, wherein control channels are assigned to both ends of the same [system bandwidth] and the transmission bandwidth is between the control channels, or to transmit reference signals with a transmission bandwidth in a given system bandwidth. low bandwidth with frequency hopping transmits
1.2	The radio communication device comprises an assignment unit (202) configured to assign the reference signals to frequency resources
1.3	The radio communication device comprises a transmitter unit (204) configured to transmit the associated reference signals 1.3. 1The transmission bandwidth varies in the given system bandwidth
	1.3.2 The allocation unit allocates the reference signals so that the reference signals are allocated to frequency resources, each of which has the low bandwidth that is independent of changes in the frequency resources. the transmission bandwidth is invariable
	1.3.3Frequency resources are allocated according to the change in the Transmit bandwidth evenly distributed in a frequency band of the transmit bandwidth

Interpretation of the patent claim

Some features require further explanation: Feature 1.1

87. Feature 1.1 expresses that the radio communication device can be configured according to the specifications of the claim (in the relevant process language of the patent in suit: "configurable to"). Based on the relationships described above, the skilled person recognises that it is thus sufficient if the device can be set up accordingly by network-side specifications. However, it is not necessary for the device to always be configured accordingly. Due to the fact that the solution is based in the context of devices moving in the radio cell and thus subject to different framework conditions, the person skilled in the art recognises that certain determinations of the communication are specified on the network side. For example, the skilled person is aware that the bandwidth required for the control channels is determined on the network side based on the need to send control information, which is determined on the network side. Accordingly, the variance of the bandwidth of the PUCCHs is determined on the network side. According to feature 1.1, the device must be able to operate in accordance with the framework conditions determined on the network side and to implement the other elements of the invention.

88. In the context of the patent in suit, the skilled person understands the term "transmission bandwidth", contrary to the applicant's view, as that bandwidth within a given system bandwidth which is located between the control channels and which is therefore available for transmitting reference signals and user data. The broadband SRS signal referred to in the claim extends over this transmission bandwidth, which is therefore defined by the system bandwidth minus the bandwidth required for the PUCCH. Over this range, in the event that no

sufficient energy is available and therefore no wideband SRS can be transmitted, the narrowband SRS are distributed by means of frequency hopping. Contrary to the plaintiff's opinion, the transmission bandwidth is not defined by the beginning of the first SRS signal transmitted in the bandwidth to the end of the last SRS signal transmitted in the bandwidth, i.e. the area actually covered by the SRS signals. The skilled person will find no support for such an interpretation in the literature. Rather, section [0006] already describes:

"Accordingly, an SRS is transmitted in the band subtracting the PUCCHs from the system bandwidth."

The skilled person finds this understanding confirmed when reading the description, which is to be used to interpret the claim (UPC_CoA_1/2024, para. 35). On the other hand, there is no support for the interpretation put forward by the applicant. At no point is it described that the transmission bandwidth - due to whatever circumstances - only extends from the beginning of the frequency of the first narrowband SRS signal to the end of the frequency of the last narrowband SRS signal and that there is therefore a frequency range between the PUCCHs at both ends and the beginning and end of the transmission bandwidth which is not to be understood as a transmission bandwidth. Although it may be conceivable to the skilled person that other signalling such as a RACH (Random Access Channel) could also be localised in the frequency, such options are not considered for the solution developed by the patent in suit. Rather, all embodiments are based on the fact that the SRS transmission bandwidth is obtained by subtracting the PUCCH transmission bandwidth from the system bandwidth (cf. section [0027] with regard to embodiment 1, to which all further embodiments refer back ("on the SRS transmission bandwidth obtained by subtracting the PUCCH transmission bandwidth from the system bandwidth")), for example [0034]: "different from ... Embodiment 1 only in SRS allocation determination section in the base station"; corresponding to [0045], [0054], [0058], [0061], [0066]). There is therefore a direct correlation between the variance of the control channels and the size of the transmission bandwidth. Nothing else follows from section [0072], which also emphasises that the transmission bandwidth depends on the variance of the PUCCHs

is defined, even if this may be a specific assigned frequency band. The distribution of the SRS signals by the assignment unit in accordance with features 1.3.2 and 1.3.3 also takes place in the initially determined available transmission bandwidth between the control channels. This variance of the transmission bandwidth is then also addressed in feature 1.3.1.

Feature 1.3.2

89. According to the wording of feature 1.3.2, the narrow bandwidth reference signals are invariable regardless of the changes in the transmission bandwidth. The person skilled in the art understands the invariability of the SRS signals in this respect as a central aspect of the proposed solution. This is because he recognises it precisely in countering a variance in the width of the control channels and the transmission bandwidth determined exclusively by this with a distribution of SRS signals, each of which is invariable in itself. For their part, they are not variable in the bandwidth that they require (for each individual SRS signal) in the frequency range. The SRS signals are addressed in section [0068]:

"In this way, according to the present embodiment, in accordance with an increase and decrease of the number of PUCCH channels, SRS allocation is changed such that a CQI estimation bandwidth is covered with fixing SRS bandwidths evenly."

Insofar as the applicant refers to section [0073], which declares a variance of ± 1 to 2 resource blocks, which does not interfere with the quality estimation, to be tolerable, after the embodiments were previously described only with invariable SRS signals, no relativisation of the invariability criterion can be derived from this in view of the unambiguous wording of the claim, which specifies the narrow bandwidth as invariable without restriction. The size of the narrowband SRS signals is only limited downwards in the document by the fact that it must be at least $1/\Delta t$ in order to be able to estimate the time offset (cf. Section [0005]). In the document referenced in section [0008] (Annex VB-T D3), after the 3rd indent in the last

As described in the third paragraph of section 3, the minimum bandwidth is 1.25 MHz in order to be able to estimate the time offset in the uplink. As the person skilled in the art is aware, this corresponds to 6 RBs. The skilled person therefore does not read a variance of up to 2 RBs into the narrow bandwidth of the SRS signal, because this could otherwise result in the narrowband SRS no longer being able to fulfil the function of being able to estimate the time offset at the same time. The example shown in Figure 13B, in which the SRS signals partially overlap but are not adjusted in size despite the overlap not being necessary for quality estimation, also speaks against a variance within a certain tolerance. Therefore, the wording and functional context within the claim argue against recognising a certain variability of the narrowband SRS signals as being in accordance with the claim.

Feature 1.3.3

90. According to feature 1.3.3, the narrowband SRS signals, which are invariable according to feature 1.3.2, should be distributed evenly in a frequency band of the transmission bandwidth (cf. e.g. [0032]: Then, as shown in Fig. 8, the positions where SRSs are frequency-multiplexed in the SRS transmission bandwidth are positions to cover the SRS transmission band evenly, that is, the frequency band subject to CQI estimation." And [0068]: "a CQI estimation bandwidth is covered with fixing SRS bandwidths evenly"). In the description and the figures, the document makes it clear to the skilled person that technically and functionally no complete coverage of the transmission bandwidth by SRS signals is required. Rather, the person skilled in the art understands that smaller gaps in the coverage between the SRS signals or between the first or last SRS and the PUCCH are acceptable for estimating the channel quality. On the other hand, there should be no major gaps in coverage, which are currently criticised in the state of the art. The distribution should therefore lead to the following instead

several small frequency ranges not covered by SRS signals may remain within the transmission bandwidth (see also Figures 8, 10, 11, 13, 14).

91. The above statements apply in the same way to the interpretation of method claim 13.

Legal validity of the patent in suit

92. Against the background of this understanding of the claim, the patent in suit proves to be legally valid, which is why the action for revocation had to be dismissed.

93. As a result, it can be left open whether the document VB-T-15 cited by the defendants for the first time in their reply to the revocation counterclaim could be taken into account. The document is cited from the parallel proceedings UPC_CFI_219/2023 conducted against Xiaomi concerning the same patent in suit against the body of law. However, the case nevertheless gives reason to express the opinion of the panel that, in principle, the revocation counterclaimant is required to raise its attacks already with the revocation counterclaim (Rule 25.1(b), (c), (d), (g) RP). At most, he can raise new attacks in individual cases, if he makes a substantiated submission that and why it was not possible for him to raise the corresponding attack in the revocation counterclaim. This is because the patent proprietor must be given the opportunity to react to new prior art, possibly by making the necessary amendments to the patent claims. However, according to Rule 30.2 RP, such requests are only permitted with the express permission of the court. Accordingly, Rule 32.2 RP only provides that the opponent may respond to a request for amendment by the patent proprietor with the arguments contained in Rule 44(d) to (h) RP and may argue as an alternative to non-infringement. On the other hand, there is no provision in principle for the opponent to introduce newly searched prior art into the proceedings which it has not yet searched without being prompted to do so by the patentee's request for amendment. Rather, this prior art is regularly no longer to be taken into account under Rule 9.2 of the Rules of Procedure.

94. In the present case, it may also have to be taken into account that the prior art searched by the defendants here was known to the plaintiff from the invalidity attack of the defendants in the parallel proceedings and that they had sufficient opportunity to deal with the prior art there within the time limit regime, especially since fundamental deviations in the assessments of the same prior art by the nullity plaintiffs here were not demonstrated or otherwise apparent. In any case, the question can remain unanswered in the present case, since the document is not novelty-destroying within the meaning of Art. 54 EPC and cannot give rise to invalidity under Art. 138(1)(a) EPC.

No unauthorised extension

95. Against the background of this interpretation, the patent in suit is not inadmissible within the meaning of Art. 138(1)(c), 76(1), 65(2) EPC.

96. The defendants argue their nullity attack on the premise that the plaintiff's interpretation of the patent claim is followed with regard to the transmission bandwidth according to the patent in suit. However, as described above, the court does not follow this interpretation.

97. Insofar as the defendants justify their attack by arguing that the teaching according to the patent in suit is inadmissibly extended due to the omission of the "generation section" and the "unit of transmission" disclosed in the parent application, the court does not follow this view. As the applicant has correctly pointed out, it is clear in the parent application in sections [0101 et seq.] and [0102 et seq.] that it is not necessary to fulfil the addressed functionality of a "generation section" in a specific physical manner. The fact that a reference signal is to be provided for the purposes of the teaching is sufficiently expressed in the claim. The same applies to the "unit of transmission" missing from the claim by the defendants.

The parent application and the patent in suit show in sections [0097] and [0098] respectively that this functionality need not be realised in a particular unit.

No cancellation of the priorities used

98. The defendants justify the elimination of the claimed priorities of the patent in suit in the same way as the attack of inadmissible extension. For the same reasons, the argumentation does not hold water. The priorities are validly claimed.

Novelty compared to VB-T D15 (EP 2 129 022 A1)

99. The citation was published on 2 December 2009 and claims priorities of 15 February 2007 and 23 March 2007, thus constituting an earlier right which can be used for the examination of novelty under Art. 54(3) EPC. Doubts about the legitimate claim to priority of JP 2007077900 have not been raised and are not apparent - the document contains the same disclosure.

100. The technical background of the document concerns the resolution of the conflict between the channels PUCCH, PRACH and the SRS signal in an SC-FDMA scheme in the uplink, i.e. by a strict frequency division multiplex procedure of PUCCH and PUSCH, whereby - in extension of the task according to the patent in suit - the conflict between PRACH and SRS signal is additionally resolved in the PUSCH data channel (section [0012]).

101. In contrast to the patent in suit, which resolves the conflict between SRS and PUCCH exclusively through frequency multiplexing, i.e. through strictly separate frequency ranges, and does not relate to the time domain, the control channel PUCCH is characterised in two types in the citation. On the one hand, as a channel that is separate from the data channel PUSCH in the time-division multiplex, and

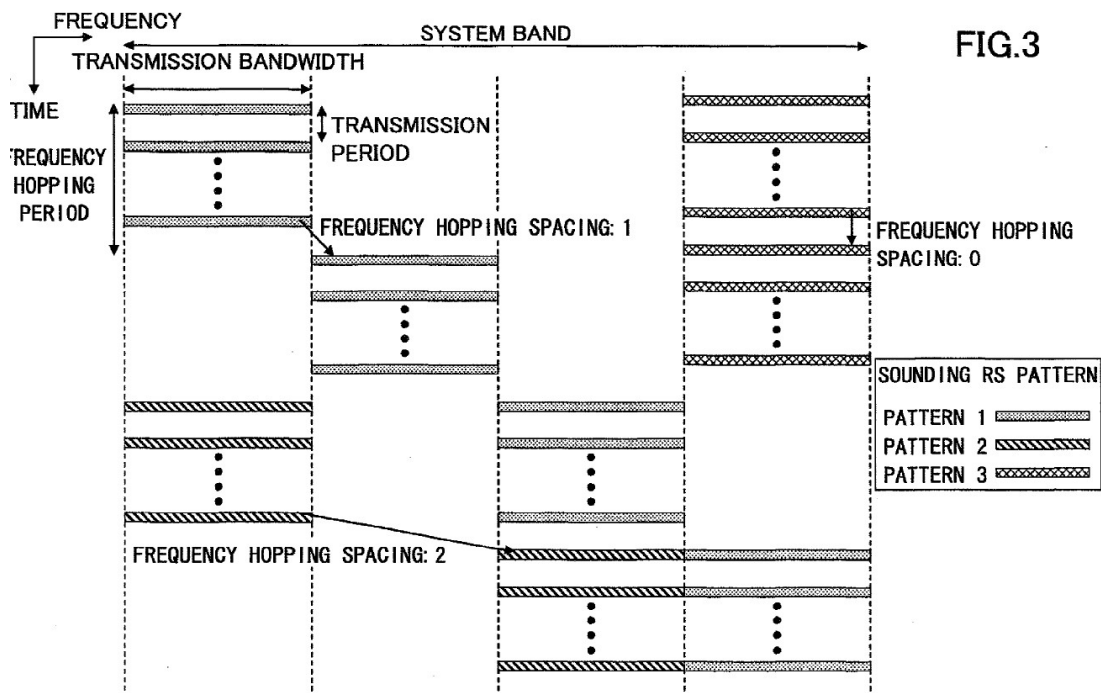
on the other hand as a control channel PUCCH, which
 from the data channel PUSCH in the frequency multiplex
 (section [0007]).

102. Thus, in this respect, there is an extension compared to the problem according to the patent in suit, since according to the teaching of the citation, the conflicts are to be solved completely both in the frequency domain (Figures 4 to 6) and in the time domain (Figures 7 and 8). However, a solution focussing solely on the frequency domain is also presented to the skilled person in the art (see section [0025]).

103. A mobile radio system comprising a base station and mobile stations in a radio cell supplied by the base station is shown in Figure 1.

104. Figure 2 shows a subframe which locates the SRS signal in the first long block of the subframe (section [0038]).

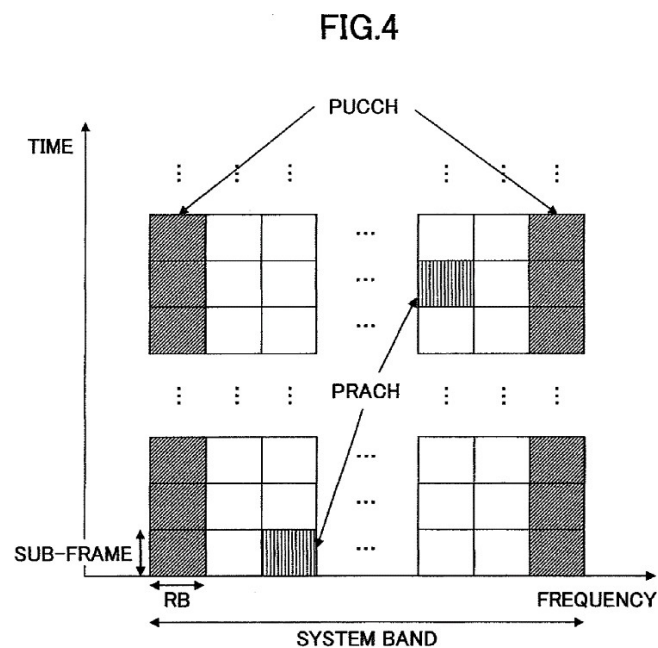
105. Figure 3 shows in principle the transmission of SRS reference signals in frequency hopping over the system bandwidth.



106. However, this figure does not show where control channels are located and whether they are variable or not. Against the background of the underlying problem and the further explanation of the conflict resolution between the SRS signal and the channels in the frequency domain addressed by the text (Figures 4, 5, 6 and 11), it is clear to the skilled person that PUCCH and PUSCH are strictly separated in the frequency domain and that Figure 3 is a simplified representation to illustrate the transmission of the SRS reference signals in the frequency domain.

107. Also, the alternative transmission of a single broadband reference signal in the transmission bandwidth is directly and unambiguously shown by the citation (section [0046]: "It should be noted that the transmission band for the Sounding RS may be divided into one or more transmission bands").

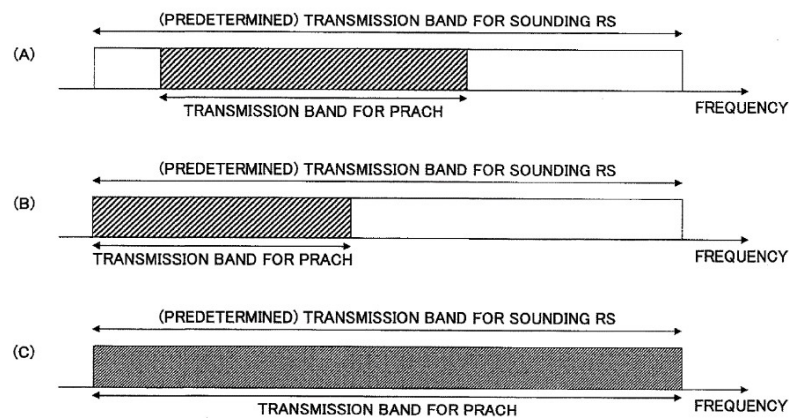
108. The fact that the control channels can be located at both ends of the transmission bandwidth can be seen from Figure 4, which shows a mapping of the resources in the uplink in the time and frequency domain for PUCCH and PRACH (section [0042]). The parties dispute whether Figures 3 to 5 are read in context by the skilled person.



109. What is missing in Fig. 4 is the representation of an SRS reference signal located between the control channels and its possible distribution.

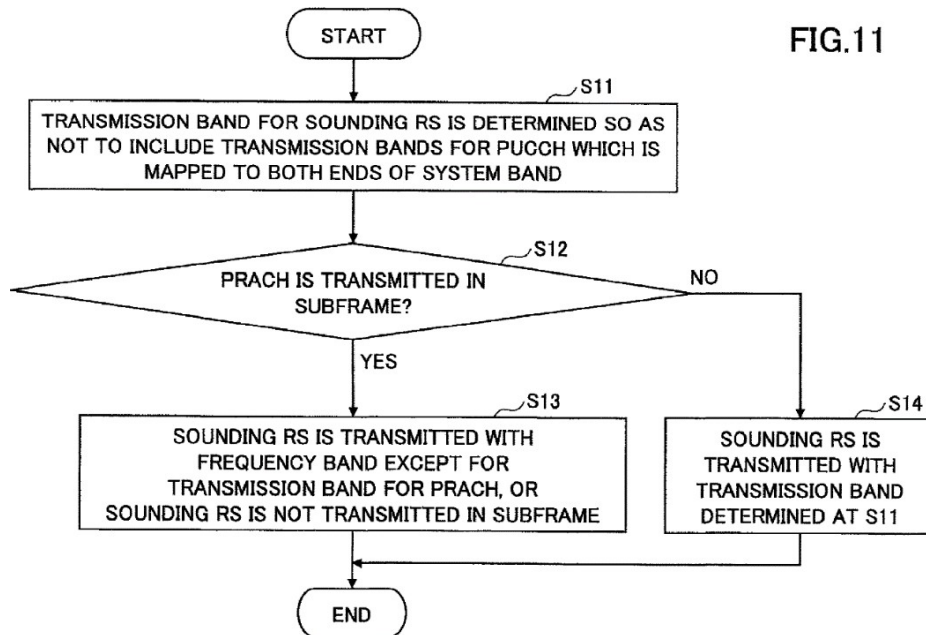
110. However, this does not mean that no SRS reference signals are assigned there. This is because the skilled person recognises that PRACH and SRS reference signals can conflict with each other in the same frequency range at certain times, whereby this conflict, which only occurs temporarily, is resolved by the measures shown in Figure 6:

FIG.6



111. Furthermore, the missing information in Figure 4 is also conveyed in the text by the fact that the allocation of the time and frequency resources for the SRS reference signals results from the mapping of PUCCH and PRACH, which is transmitted from the base station to each mobile station in the radio cell by means of a broadcast (section [0045]), and this information is also taken into account when mapping the individual SRS resources of the individual mobile station, which is communicated by means of an RRC message (last sentence [0040] and Figure 11).

112. Step S11 shown in Figure 11 refers to a transmission bandwidth if there is no time conflict in the frequency range between SRS and PRACH. In this case, the SRS is transmitted in this transmission bandwidth (Figure 11 - step S14).

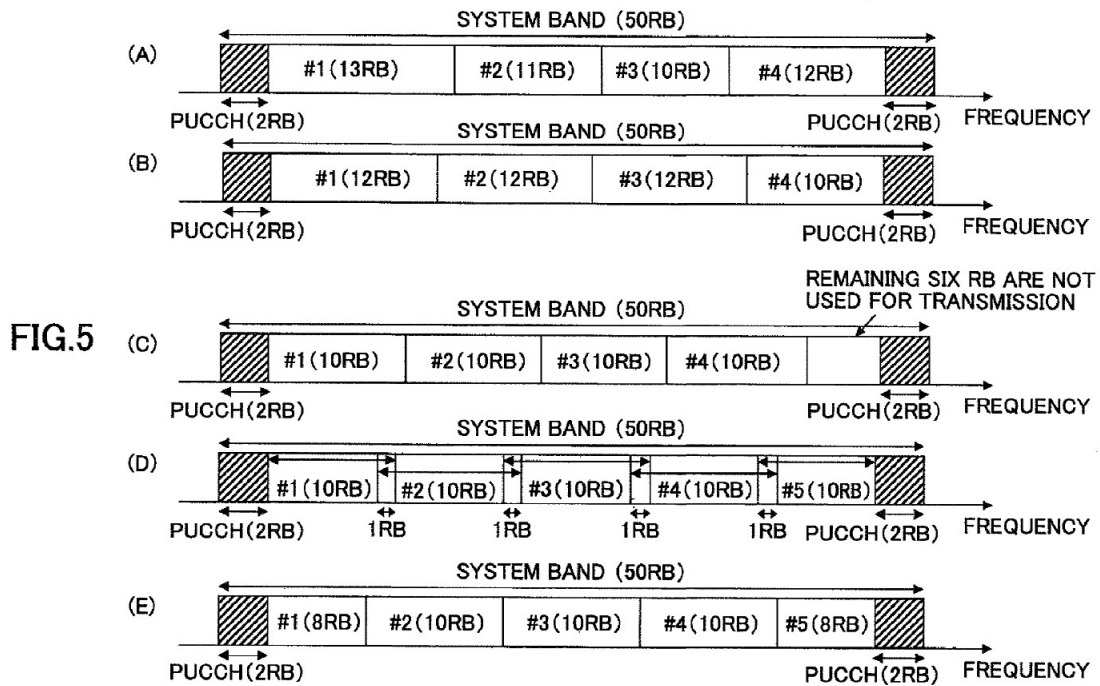


113. If a conflict occurs at certain times (Figure 11 - step S12), this must be resolved in a further step (Figure 11 - step S13) with regard to the options shown in Figure 6.

114. If, therefore, following the argumentation of the plaintiff for revocation, it is taken from the document that in Figure 3 only a simplified representation of the basic principle of the transmission of the SRS reference signals in the frequency hopping is shown and the control channels are assigned to both sides of the system band and there neither SRS reference signals (Figure 11 - step S11) are assigned nor transmitted (Figure 11 - step S14), this nevertheless does not lead to a complete disclosure of the teaching of the patent in suit.

115. If, again following the defendant's argumentation, Figure 5 is read in this context with Figures 3 and 4 (cf. section [0026] - description of the figures: "transmission band for a Sounding RS when a PUCCH is mapped to both ends of the system band"), it shows the distribution of the reference signals of low bandwidth in a variable bandwidth according to the claim.

transmission bandwidth, but at least not that the reference signals are invariable in size:



116. This is because Figures 5A and 5B initially only disclose a distribution with reference signals of low bandwidth, which, however, is not invariable but varies and is therefore not in accordance with the claim. Within Figure 5A, the bandwidth of the individual SRS signal varies between 10 and 13 RB and thus even outside the tolerance of ± 1 to 2 RB mentioned in the application, which, however, as explained above, does not in any case lead to the claim still recognising an invariable SRS signal. In any case, Figures 5A and B are in turn related to Figures 5C, 5D and 5E. The person skilled in the art is thus shown various possible configurations without recognising at this point that a reference signal of invariable width is specified. Rather, the signals in the various embodiments of Figures 5 vary arbitrarily in their width and are merely arranged in such a way that they cover the transmission bandwidth between the PUCCH. However, the skilled person is not immediately and clearly shown as belonging to the invention that the reference signals are invariable. In addition, the PUCCH in Figure 5

are each 2 RB wide and do not vary. The context according to the patent in suit for solving the problem of distributing invariable SRS signals in the variable transmission bandwidth defined by varying PUCCH is thus not shown as an element of the invention of the citation.

117. The other figures 5C, 5D and 5E do not change this either. It is true that Figure 5C and Figure 5D show a distribution with a reference signal of invariable low bandwidth of 10 RB, whereby Figure 5D with overlapping reference signals of invariable 10 RB shows a uniform distribution within the meaning of feature 1.3.3, as is also presented in Figure 13B of the patent in suit as being in accordance with the claim. However, the frequency bandwidths occupied by the control channels do not vary here either, but are each 2 RB wide, although the skilled person may read their variability into the figure from section [0042] and section [0045], last sentence, and section [0040] and Figure 11. However, in accordance with the approach of the invalidity applicants, these figures are also to be considered in their context and are therefore on an equal footing with Figures 5A, 5B and 5E, which do not show invariable but varying reference signals. The five different distributions presented in the transmission bandwidth are therefore arbitrary for the person skilled in the art. The fact that the reference signals within the meaning of feature 1.3.3 of the patent in suit are invariable in any case despite the variance of the PUCCHs is not disclosed to him directly and unambiguously as belonging to the invention for solving the conflict between PUCCH and SRS signals mentioned in the citation. This solution of the patent in suit is also not directly and clearly conveyed to him in the description passages explaining Figures 5 (sections [0047 ff.]). Rather, the alternatives are juxtaposed as arbitrarily interchangeable without favouring a particular embodiment variant. It is therefore crucial that the invariability of the SRS signal is not shown here, not even in an embodiment variant of Figure 5. Rather, the skilled person reads Figures 5 as well as Figures 3 to 5 in context. In this case, however, the result for the person skilled in the art is not the invariability of the bandwidth of the SRS signal, but only an SRS signal that varies depending on the transmission bandwidth to be covered and not an SRS signal that can be transmitted despite the bandwidth of the SRS signal.

varying transmission bandwidth unchanging SRS signal. Feature 1.3.3 is thus not disclosed as prejudicial to novelty.

New feature compared to the VB-T D1

118. The teaching of the patent-in-suit is also new compared to citation D1.

119. In the LTE standard, it was known at the priority date of the patent in suit to arrange the control channels PUCCH (Physical Uplink Control Channel) in the uplink at both ends of the system bandwidth (uplink bandwidth), with the data channel PUSCH (Physical Uplink Control Channel) shared for the transmission of uplink data being located in the frequency range in between. This understanding is demonstrated by Figure 18 in section 6.4.3 of VB-T D9, whereby section 6.5.2.2 of VB-T D9 states that the "sounding reference signal" is assigned to a long SC-FDMA symbol. VB-T D5 also states in section 1.1, 2nd indent, that the PUCCH bandwidth is variable.

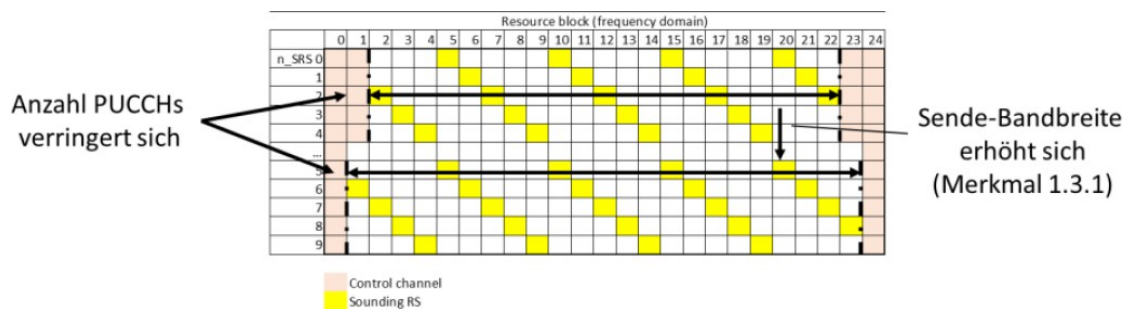
120. According to citation D1, in order to estimate the channel quality of the PUSCH, it was also known that the reference signals required to estimate the channel quality are located in the frequency band of the PUSCH (Chapter 7 - Frequency multiplexing of data and sounding signals).

121. Furthermore, citation D1 distinguishes between broadband reference signals (non-hopped fixed sounding RS with broadband sounding BW1) and narrowband reference signals in frequency hopping (frequency hopped narrowband sounding RS with narrowband sounding BW2), whereby the variability of the bandwidth of the control channels is taken into account when allocating the bandwidth for the reference signals (sounding BW) (section 8 - "May be specified in #RB, but will have to take into account the variable control channel overheads within a slot (i.e., top/bottom sounding may be smaller than nominal)).

122. But this consideration inevitably leads to the fact that the narrowband reference signals are not invariable, but depend on the change of the control channels and thus the transmission bandwidth. (Section 8 - "May be specified in #RB, but will have to take into account the variable control channel overheads within a slot (i.e., top/bottom sounding may be smaller than nominal)").

123. Thus, at least feature 1.3.2 is not directly and unambiguously disclosed in D1 with respect to the requirement for an invariable bandwidth of the narrowband reference signals.

124. Even if one were to follow the defendant's submission in relation to citation D1, the narrowband reference signals in its example are represented in the frequency hopping with an invariable bandwidth of 1 RB:



125. However, the selection of a bandwidth of 1 RB for a narrowband reference signal is arbitrary and, above all, contradicts the values that result for the Narrowband Sounding BW2 according to the results of the evaluation in Appendix B and the recommendation according to the table in Section 8, which recommends a bandwidth of 1.25 MHz (6 RBs) for the narrowband reference signal with a system bandwidth of 5 MHz.

126. Moreover, it remained uncontested at the oral hearing that it is clear to the skilled person from paragraph [0005] of the patent in suit that in order to fulfil the requirement for estimating the timing offset between the base station and the mobile station, the reference signals must have a certain minimum bandwidth, which is invariable in the case of narrowband SRS transmission. A

narrowband reference signal comprising only 1 RB does not - as the skilled person is aware - cover the minimum bandwidth in order to be regarded as a narrowband SRS within the meaning of the patent in suit. This is also confirmed by VB-T D3, which is cited in the patent in suit in paragraph [0008] as prior art and states in the 3rd indent in the last paragraph of section 3: "The minimum sounding bandwidth of 1.25MHz would be sufficient for the uplink timing estimation". This corresponds to a width of 6 RB.

Novelty also with a view to the VB-T D1a citation

127. A different result does not emerge even if the VB-T D1a listed in VB-T D1 is taken into consideration.

128. Citation D1a is cited as document [2] in citation D1 and is referred to by the defendants to show where the 1 RB reference signals are to be located in a system band with a bandwidth of 5 MHz, i.e. 25 RB (page 4, lines 3 to 6 and 12 to 16), in order to show, in conjunction with D1, the previously described allocation of narrowband reference signals of a bandwidth of 1 RB in the frequency hopping.

129. According to the text passage cited in D1a, i.e. "Structure A", Figure 2 shows, however, that the narrowband 1 RB reference signal (narrowband SRS) transmitted there in the BPICH (broadband pilot channel) in frequency hopping is transmitted over the entire system band of 5 MHz and also encompasses the frequency range of the control channels PUCCH.

130. Figure 1 shows the assignment of the BPICH, which occupies the entire system band of 5 MHz and does not exclude the frequency range of the PUCCH control channels.

131. To summarise, when the reference signals are transmitted in the BPICH in accordance with D1a, the entire system band is always covered and the control channels are not excluded.

132. It can be seen directly and clearly from D1a that when a reference signal is sent on the BPICH, the conflict with the control channel is resolved in terms of time, whereby this time block is then not available to the control channel.

133. Thus, based on D1, the text passage quoted in section 7, "it may be desirable to exclude the edge-RBs used for UL control signalling from the sounding blocks, thus resulting in FDMA between sounding signals and control data signals", which specifically refers to an FDMA, does not provide any additional information by reference to D1a that is not already directly and unambiguously apparent from D1.

134. In particular, feature 1.3.2 is still not fulfilled with regard to the requirement of an invariable bandwidth of the narrowband reference signals transmitted in the frequency hopping and is not directly and unambiguously disclosed.

Novelty compared to the VB-T D3 citation

135. D3 is cited as prior art in paragraph [0008] of the patent in suit and was therefore taken into account in the grant procedure.

136. Section 2 of D3 first discusses two previously known approaches for transmitting reference signals (abbreviated as CS RS = uplink channel sounding reference signal) together with uplink control channels (PUCCH) in a system bandwidth.

137. In a first approach, which describes a time division multiplexing method (TDM), the reference signals occupy the entire uplink bandwidth (system bandwidth). In this approach, the control channel cannot be transmitted during the transmission of a reference signal. This means that no information can be transferred to the control channel during the transmission of the reference signals.

control channels are transmitted. This first approach is shown in Figure 1 of D3. It can be seen that the reference signal utilises the entire system bandwidth.

138. In a second approach (FDM), known as frequency division multiplexing (FDM), the reference signals are only transmitted within frequency bands that are not occupied by a control channel (PUCCH). In this approach, the reference signals only jump within a frequency band that is not occupied by the control channels. This second approach is referred to in D3 by citing citation D3a (see D3a below).

139. According to Table 1 disclosed in D3 in Section 3, for system bandwidths up to 5 MHz the specified bandwidth values of the transmit bandwidth (Wide sounding BW) always amount to the entire system bandwidth. Thus, for system bandwidths up to 5 MHz, no resources remain in the specified system bandwidth for assigning the control channels (feature 1.1) and, in the absence of varying control channels, there is also no change in the transmission bandwidth for a fixed system bandwidth (feature 1.3.1) and, as a direct consequence, no disclosure of features 1.3.2 and 1.3.3.

140. The fact that at system bandwidths above 5 MHz the remaining portion of the system bandwidth not used by the transmission bandwidth remains and could in principle be available does not imply otherwise, since D3 does not comment on this and there is no specific disclosure in this regard.

Cancellation VB-T D3a

141. Citation D3a is cited as document [3] in Citation D3 and is referred to by the Defendants to show that the reference signals do not use any of the blocks ("LB"=Long Block) of the control channels (PUCCH) and that the conflict between control channels and reference signals by means of

Frequency-division multiplexing (FDM) can be used to solve this problem.

142. In fact, section 6 of Figure 1 shows a system bandwidth at each end of which a single control channel is assigned. In the intermediate area of the transmission bandwidth, reference signals of low bandwidth (narrowband SRS) are transmitted in frequency hopping:

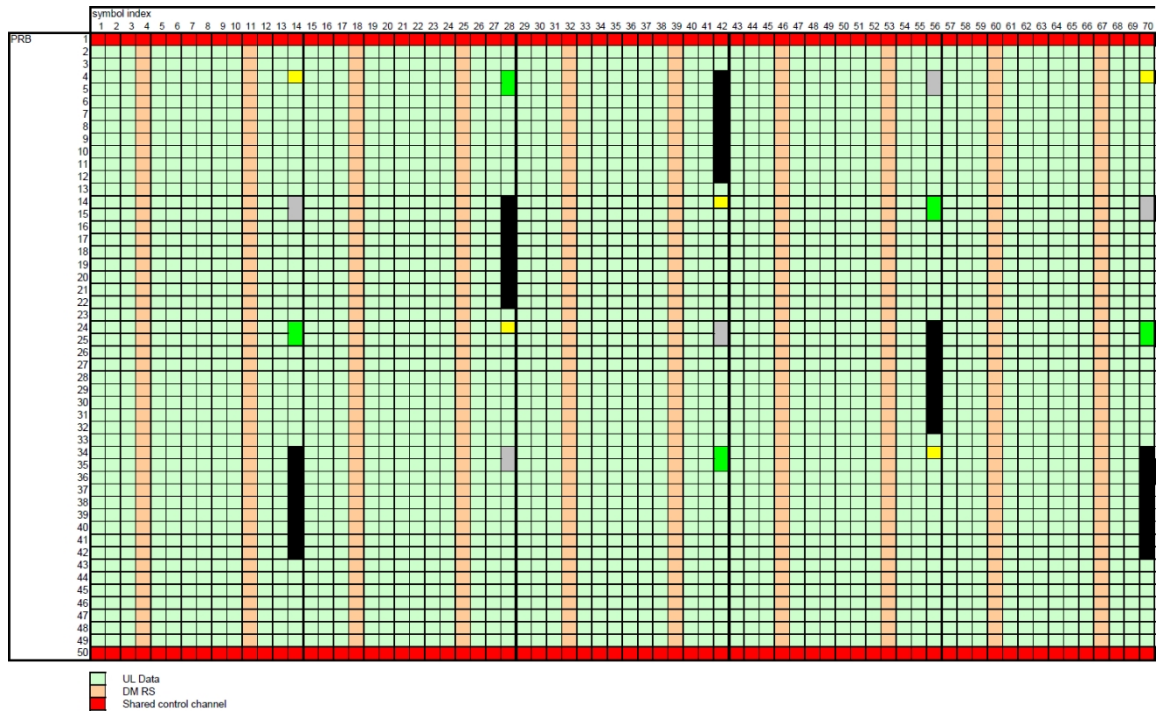


Figure 1. An example of bandwidth allocation for UL data, DM RS and sounding RS.

143. By using FDM, there are no conflicts between the control channels and the reference signals addressed by the patent in suit, since there is a strict separation of control channels and reference signals available frequency resources.

144. However, varying control channels are also not to be taken from D3a and consequently the disclosure of features 1.3.1 and 1.3.3 is still missing.

No lack of novelty of VB-T D2 and inventive step

145. According to the defendant's own argumentation (KE para. 224), the citation VB-T D2 is only prejudicial to novelty if - as is not the case - the plaintiff's interpretation of the term "transmission bandwidth" were to be followed. Consequently, the argument of a lack of inventive step based on the specification cannot be accepted either.

VB-T D4a and 4b citations

146. Both citations VB-T D4a and 4b were published after 14 August 2007 as the relevant priority date and are therefore not prior art.

Other citations cited as evidence of the prior art VB- T D5 to D12

147. The other documents D5 to D12 cited by the defendants as prior art only serve as evidence of a technical understanding already confirmed in the above statements or serve to oppose patentability in the form of the sub-claims and therefore do not require any further assessment.

Feasibility of the invention and lack of inventive step

148. Contrary to the defendant's view, the invention is also disclosed in sufficient detail for the person skilled in the art (Art. 138(1)(b) EPC, 65(2) EPC). However, according to its own explanations, the defendant's argumentation only holds up if one were to follow the plaintiff's incorrect understanding of the transmission bandwidth. This would leave unsampled gaps, so that it would remain unclear how a good estimate of the channel quality could be achieved. In this respect, reference is made to the previous statements with regard to the correct understanding of the claim.

149. The patent in suit is also based on inventive step. In their reply to the revocation counterclaim, the defendants again argue this attack against the patent in suit only on the basis of the plaintiff's incorrect interpretation of the claim (see above).

Infringement of the patent in suit

150. The attacked embodiments, in particular the 4G-capable smartphones such as the OPPO Find X5 Pro and the 4G-capable smartwatches of the defendants, operate according to the 4G standard and thereby infringe the patent in suit in its main claims 1 directly in accordance with the wording within the meaning of Art 25(a) UPCA and the method claim 13 indirectly within the meaning of Art. 26 UPCA by offering, placing on the market, using or importing for these purposes and possessing the attacked embodiments in the territory of the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden without the plaintiff's consent. The challenged embodiments are means relating to an essential element of the invention and the defendants should at least have known that they are intended and suitable to be used for the use of the invention in the presently invoked Contracting States in which the respective bundle patent part of the patent-in-suit is in force.

151. The relevant components of the 4G standard are mandatory. The following components are relevant in this context:

- ETSI TS 136 213 V8.8.0 (2009-10), LTE; Evolved Universal Terrestrial Radio Access (E-UTRA); Physical Layer Procedures (hereinafter: TS 136 213), Annex KAP A 16;

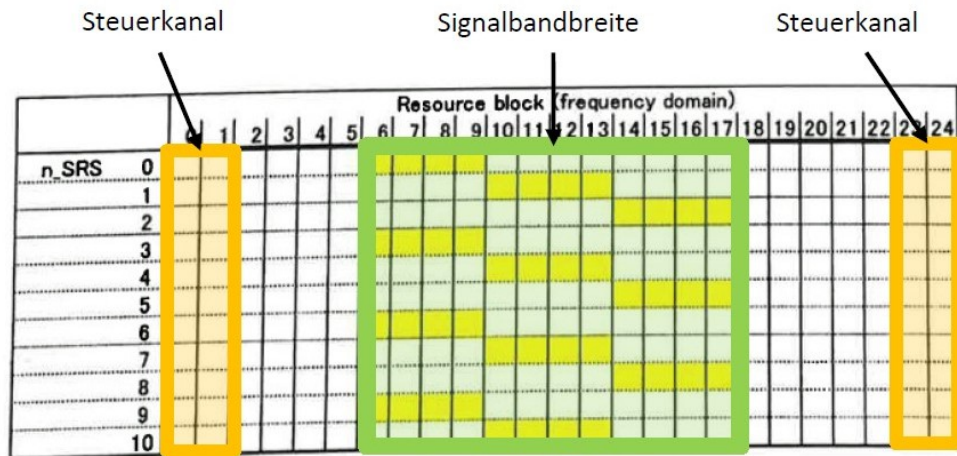
- ETSI TS 136 211 V8.9.0 (2010-01), LTE; Evolved Universal Terrestrial Radio Access (E-UTRA); Physical channels and modulation (hereinafter: TS 136 211), Annex KAP A 17;
- ETSI TS 136 331 V8.12.0 (2011-01), LTE; Evolved Universal Terrestrial Radio Access (E-UTRA); Radio Resource Control (RRC) (hereinafter: TS 136 331), Annex KAP A 18.

152. The defendants wrongly deny infringement by the LTE standard insofar as features 1.1, 1.3.1, 1.3.2 and 1.3.3 are concerned. The realisation of the other features of the claim is not in dispute between the parties and is also not based on misconceptions under patent law.

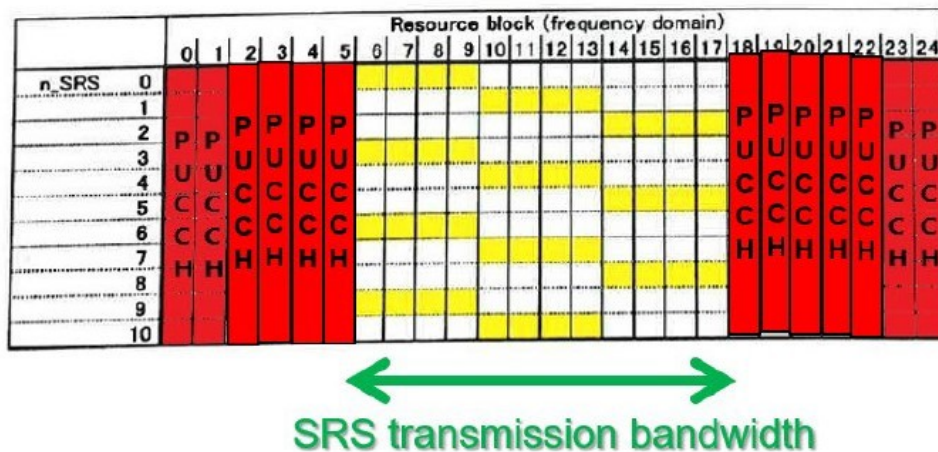
The argument that the patent in suit is not infringed because the LTE standard allows the signal bandwidth of the SRS signals to be set independently of the PUCCH and a change in the signal bandwidth is not dependent on a varying PUCCH is not correct. In this respect, the defendants overlook in their argumentation that it is sufficient according to the claim that the radio communication apparatus can be set by network-side instructions in accordance with the specifications of the claim ("radio communication apparatus configurable to").

Violation Feature 1.3.3

153. According to the standard, the SRS signals can be distributed evenly in the transmission bandwidth as defined in feature 1.3.3. This can also take place depending on the change in the transmission bandwidth. There are also no disadvantageous gaps between the control channels and the frequency ranges actually covered by the SRS signals, which the defendants have illustrated with the graphic shown below:



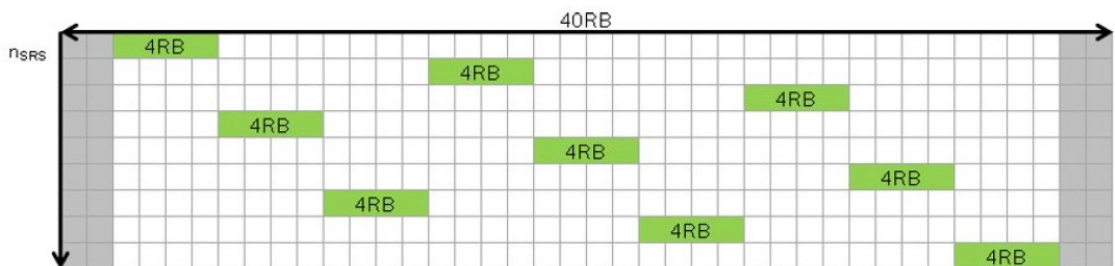
154. With reference to Table 5.5.3.2-1 of TS 136 211 (Annex KAP A 17), the applicant pointed out that this representation is artificial because in this case the base station would not actually leave any gaps to the right and left of the areas covered by SRS, but would only select the configuration in this way if there was correspondingly high traffic on the PUCCHs and these then occupied correspondingly more RBs. They have tried to illustrate this schematically using the figure shown below:



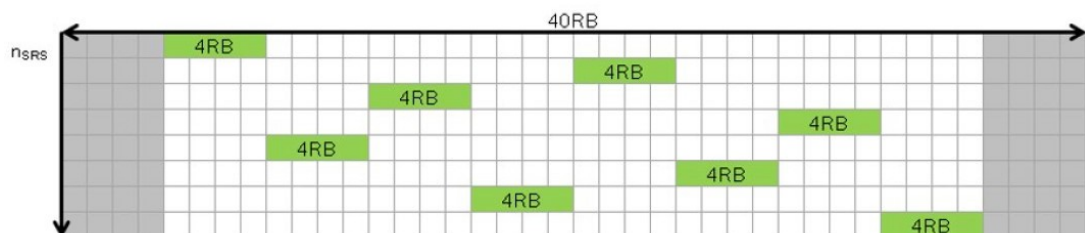
155. In the example shown by the defendants, however, the network would select configuration 3 with a bandwidth of 20 RBs in order to cover the area between the PUCCHs as well as possible:

SRS bandwidth configuration C_{SRS}	SRS-Bandwidth $B_{SRS} = 0$		SRS-Bandwidth $B_{SRS} = 1$		SRS-Bandwidth $B_{SRS} = 2$		SRS-Bandwidth $B_{SRS} = 3$	
	$m_{SRS,0}$	N_0	$m_{SRS,1}$	N_1	$m_{SRS,2}$	N_2	$m_{SRS,3}$	N_3
0	36	1	12	3	4	3	4	1
1	32	1	16	2	8	2	4	2
2	24	1	4	6	4	1	4	1
3	20	1	4	5	4	1	4	1
4	16	1	4	4	4	1	4	1
5	12	1	4	3	4	1	4	1
6	8	1	4	2	4	1	4	1
7	4	1	4	1	4	1	4	1

156. The fact that this determination is made by the network and not by the UE does not preclude infringement of the claim. Rather, it is sufficient that on the network side, for example with a system bandwidth of 8 MHz, the configuration $B_{SRS} = 3$ with $C_{SRS} = 0$ can also be selected, in which the following distribution results, which is uniform and corresponding to the change in the transmission bandwidth within the meaning of feature 1.3.3:



157. This has also been substantiated by the plaintiff for the configuration $C_{SRS} = 1$ and $B_{SRS} = 3$:



158. The defendants have not countered this with any substance (Rule 172.2 VerfO). The defendants' reference to the fact that the 8 MHz example chosen by the plaintiff as an illustration in the LTE standard is not a common bandwidth is irrelevant. This is because the defendants have recently merely pointed out that the parameters m_{SRS} and c_{SRS} referred to by the plaintiff are only assigned semi-statically and that the adjustment is only possible in 80 ms intervals at the shortest (Duplik Technik para. 83 et seq.). On the other hand, the PUCCH changes every millisecond and the data assigned to the PUCCH in each subframe is calculated by the terminal device from data that it received from the base station in the downlink only 4 milliseconds before the respective subframe, which is why the LTE standard relied on excludes an adaptation of the (semi-) static SRS configuration to the rapidly and dynamically varying PUCCHs (Duplik Technik para. 90-110).

159. However, this argument is irrelevant under patent law because the present teaching does not presuppose that the conflict between PUCCH and SRS signals addressed by the patent in suit is absolutely excluded in any of the diverse and, as is known to the skilled person, dynamic conditions. The patent in suit does not provide sufficient evidence for such an understanding of the teaching formulating an absolute claim. Therefore, if the realisation of the teaching does not occur in individual time intervals due to adaptation offsets in the signalling by the network, this is irrelevant.

160. The defendant's argument that, according to its submission, there is no difference between the previously mentioned parameters c_{SRS} and b_{SRS} as well as there is no correlation with the parameter $N^{(2)}$, which assigns a certain number of control channels to a mobile device by the base station (statement of defence para. 121). This argumentation does not deny that the radio communication device according to claim 1 can be set up accordingly, which is sufficient under patent law.

Violation Feature 1.3.2

161. Accordingly, the realisation of feature 1.3.2 by the defendants cannot be successfully denied with the argument that in the standard a change in c_{SRS} can cause a change in m_{SRS} and thus a change in the bandwidth of the reference signal and thus the bandwidth of the reference signal is not fixed irrespective of c_{SRS} (cf. statement of defence technology para. 126). The plaintiff correctly points out that the standard has configurations for which only one and the same narrowband bandwidth of the SRS signal is defined, as shown below, configurations 2 to 6 each have a constant narrowband bandwidth of 4 RBs, which is sufficient for the realisation of the feature (Technical Reply para. 68 et seq.):

5.5.3.2 Mapping to physical resources

[...]

Tabel 5.5.3.2-1: $m_{SRS,b}$ and N_b , $b=0,1,2,3$, values for the uplink bandwidth of $6 \leq N_{RB}^{UL} \leq 40$.

SRS bandwidth configuration c_{SRS}	SRS-Bandwidth $B_{SRS} = 0$		SRS-Bandwidth $B_{SRS} = 1$		SRS-Bandwidth $B_{SRS} = 2$		SRS-Bandwidth $B_{SRS} = 3$	
	$m_{SRS,0}$	N_0	$m_{SRS,1}$	N_1	$m_{SRS,2}$	N_2	$m_{SRS,3}$	N_3
0	36	1	12	3	4	3	4	1
1	32	1	16	2	8	2	4	2
2	24	1	4	6	4	1	4	1
3	20	1	4	5	4	1	4	1
4	16	1	4	4	4	1	4	1
5	12	1	4	3	4	1	4	1
6	8	1	4	2	4	1	4	1
7	4	1	4	1	4	1	4	1

Violation Feature 1.3.1

162. According to the standard, the transmission bandwidth also varies in the given system bandwidth. The applicant has shown with substance that for a system bandwidth of 25 RB (5 MHz) several configurations are provided by the standard and that the transmission bandwidth $m_{SRS,0}$ changes by changing the configuration c_{SRS} :

5.5.3.2 Mapping to physical resources

[...]

Tabel 5.5.3.2-1: $m_{\text{SRS},b}$ and N_b , $b=0,1,2,3$, values for the uplink bandwidth of $6 \leq N_{\text{RB}}^{\text{UL}} \leq 40$.

SRS bandwidth configuration C_{SRS}	SRS-Bandwidth $B_{\text{SRS}} = 0$		SRS-Bandwidth $B_{\text{SRS}} = 1$		SRS-Bandwidth $B_{\text{SRS}} = 2$		SRS-Bandwidth $B_{\text{SRS}} = 3$	
	$m_{\text{SRS},0}$	N_0	$m_{\text{SRS},1}$	N_1	$m_{\text{SRS},2}$	N_2	$m_{\text{SRS},3}$	N_3
0	36	1	12	3	4	3	4	1
1	32	1	16	2	8	2	4	2
2	24	1	4	6	4	1	4	1
3	20	1	4	5	4	1	4	1
4	16	1	4	4	4	1	4	1
5	12	1	4	3	4	1	4	1
6	8	1	4	2	4	1	4	1
7	4	1	4	1	4	1	4	1

163. Again, it is sufficient that the steps performed by the radio communication device can be controlled on the network side, because according to the wording of the claim ("configurable to") it is sufficient that the device is set up to interpret and process the corresponding control commands.

Violation Feature 1.1

164. Finally, feature 1.1 is also realised by the LTE standard. This is because even if the claim to the transmission bandwidth is correctly understood, a configuration for the value $m_{\text{SRS},0}$ can be provided on the network side as standard, in which the transmission bandwidth lies between the control channels, since it indicates the bandwidth in which the reference signals are distributed. This was not substantiated by the unsubstantiated assertion made in the statement of defence in technical paragraph 134 that it is "obvious" that Table 5.5.3.2-1 is only intended for changing system bandwidths, but does not require an adjustment of the transmission bandwidth within a constant system bandwidth. It is sufficient that the standard enables a patent-compliant configuration.

Passive legitimisation of the defendant

165. The defendants also have standing. Defendant 1. maintains its European headquarters in Düsseldorf and controls the distribution of the attacked embodiments in the respective contracting states of the UPCA asserted in the present case from here. Defendant 2. operates in Düsseldorf together with defendant 2.

1 is the European headquarters of the group. Defendant 1 controls the business activities of defendant 2.

166. It is aware of the channels through which mobile devices of the OPPO Group are distributed, in particular via third-party providers in Europe and especially in the Federal Republic of Germany, and promotes this and does not oppose it despite being aware of it. Its website contains links to providers through which the Oppo Group's 4G-capable products can be purchased. In addition, it supports these sales activities by also providing the user manuals of the 4G-capable products written in the respective language on the markets asserted in the present case, offering warranty packages, placing targeted advertising for the attacked embodiments during the UEFA Champions League and thus actively promoting the sales activities on the markets asserted in the present case. Defendant 2. cooperates with defendant 1. in a structured manner to promote sales.

167. In particular, the plaintiff has submitted in a sufficiently substantiated manner that - in addition to the acts attacked in the other contracting states with the present action - the attacked embodiments are still offered and marketed on online marketplaces such as Otto, Amazon Marketplace and Google Shopping in the Federal Republic of Germany, from which the defendant group allegedly claims to have withdrawn. This means that specific submissions on acts of infringement have also been made with regard to the German part of the bundle patent asserted in the present case. The defendant's blanket denial with regard to acts of infringement by both defendants in the Federal Republic of Germany is unsubstantiated (R.171.2 VerfO). It

It is not sufficient to take the general view that the plaintiff's submission does not suffice as evidence for the promotion of the actions described by the plaintiff. The plaintiff's submission was not specifically contradicted.

Legal consequences of patent infringement

168. The established patent infringement by the defendants of the national part of the bundle patent validated in the respective asserted contracting states justifies the legal consequences sought by the plaintiff.

169. The application for a declaration of patent infringement is based on Art. 64(2)

(a) UPCA. In the present context of infringement of a standard essential patent, the determination of patent infringement serves the legitimate interest of the plaintiff, also vis-à-vis (non-)authorised distributors of the defendant.

170. The injunction sought by the plaintiff with regard to the infringing act is based on Art. 25(a), Art. 63(1) UPCA and must be granted because there is a risk of repetition due to the infringing acts committed by the defendants in the past in the contracting states asserted in the present case. The defendants may not continue the acts of offering, placing on the market, using, importing or possessing for these purposes in the Contracting States covered by the action. In particular, sufficient submissions have been made with regard to the national parts of the bundle patent asserted in the present case and their infringement in the respective territories. There was no need for a separate statement on the "in particular" requests of the plaintiff with regard to the sub-claims because these are merely exemplary concretisations of the acts already covered by the main statement.

171. In the present case, there are no apparent reasons to refrain from exercising the court's discretion ("may ... issue") to issue a final order. Rather, proportionality considerations (Art. 42 UPCA and

Art. 3(2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights) already comprehensively in the context of the consideration of the examined antitrust compulsory licence objection under application of the of the European Court of Justice's balanced negotiation programme (see below). Further circumstances that would appear to make it necessary from the point of view of proportionality not to issue an injunction in the present case have not been sufficiently demonstrated. It also had to be taken into account that the defendants, according to their own submission, do not see their main business in the markets of the contracting states of the UPCA anyway, as is also reflected in the fact that [...]. Thus, according to their own submission, the injunction does not preclude them from operating in the defendant's core markets. Nor can the generalised argument that the plaintiff does not manufacture itself and is therefore not in direct product competition with the defendants prevail. Rather, specific facts must be presented in this respect that justify a different decision because they are not already reflected in the negotiation programme of the European Court of Justice's decision. This has not been done in the present case. The defendant's submission does not indicate any such further aspects.

172. Contrary to the view of the UK Court of Appeal [2024] EWCA Civ 1143 para. 79, standard-essential patents are also not to be regarded as patents which have solely a monetary assignment content, at least in the legal area of the European Union. On the contrary, according to the case law of the European Court of Justice - which is admittedly no longer relevant for the courts of the United Kingdom - the holder of an SEP can also exercise the prohibition rights to which it is entitled on the basis of the patent, ECJ, Huawei v. ZTE, ECLI:EU:C:2015:477, para. 46:

"It is settled case-law that the exercise of an exclusive right attached to an intellectual property right, in this case the right to bring an infringement action, is one of the prior rights of the owner of an intellectual property right, so that it does not in itself constitute an abuse of a dominant position.

position, even if it originates from a company in a dominant position."

173. This is incompatible with an understanding of the SEP as a legal title that does not include the right to enforce an injunction and that serves solely to enforce higher licence claims. Such a view is incompatible with European law, as Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights as a standard in the European judicial area shows. This also follows from the decision of the ECJ (*ibid.* para. 57-59 and para. 71), in which it is stated that it does not constitute an abuse of a dominant market position to bring an action for an injunction against an infringement as long as certain steps have been taken prior to such an action. Such an understanding would also be incompatible with the minimum constitutional guarantees of the Federal Republic of Germany as one of the contracting states invoked in the present case (Article 14 (1) of the Basic Law of the Federal Republic of Germany) as well as with Article 17 (2) of the Charter of Fundamental Rights of the European Union.
174. Nor is any other restriction of the injunction appropriate in view of the FRAND rate determination taking place in the UK in a different dispute. The decision of the UK Court of Appeal itself states that the Oppo group of companies is not affected by the *declaratory judgement* (*ibid.* para. 2). It can therefore be left open in the present dispute whether the finding made - in the words of the UK Court of Appeal - is *de facto* an "anti-suit relief by the back door" (*ibid.* para. 67) that is unacceptable in the international treaty law context of TRIPs (cf. Art. 1.1, 28.1 and .2, 41.1, 44.1 TRIPs, which must be observed in this context under international law).
175. The threat of a penalty payment for failure to act (Art. 63(2) UPCA) raises no objections. The unit-related nature of the penalty payment provides a parameter for the calculation of the penalty payments to be paid to the court in the cases to be

of sales activities to be omitted. The stipulation has deterrent potential. However, the amount was to be reduced to EUR 1,000.00 per form of infringement, which is considered sufficient but also appropriate in relation to the sales prices. Insofar as other actions are objected to, the appropriate amount will have to be determined in separate enforcement proceedings. The defendants may counter the risk of any cumulative determination of penalty payments in parallel proceedings in the enforcement proceedings if the plaintiff actually pursues parallel enforcement.

176. The threat for the measures of disclosure, information, recall and removal are based on Art. 82 para. 1 and 4 UPCA, R. 354.3 VerfO. The determination of the appropriate penalty payment is to be reserved for the enforcement proceedings because there is currently insufficient evidence to assess the appropriateness of a penalty payment to be determined in terms of amount.

177. The request for destruction of the products directly infringing claim 1 is based on Art. 64 (2) (e) UPCA, the requests for recall of these products from the distribution channels and final removal of these products from the distribution channels are based on Art. 64 (2) (b) and (d), (4) UPCA. According to the wording of the UPCA, permanent removal from the channels of commerce is a separate measure from recall. It accompanies the recall, whereby removal can only be considered if the infringer has the factual and legal means to do so. No sufficient reasons have been presented or are otherwise apparent that would oppose the ordering of these measures, for example from the point of view of proportionality, and that go beyond the consequences resulting from a patent infringement that the infringer has to bear. However, no time limit of a specific number of days had to be provided for the enforcement of this obligation. In this respect, it had to be seen that the obligation on the basis of the court order is immediate on the one hand, but on the other hand - especially in the case of an allegation of infringement extending to several contracting states of the UPCA, the cessation of which is

time - could not be ordered without a submission on the circumstances of the present case, because it is not possible for the court to assess the question of which period appears appropriate in the present case in view of the considerable scope of the acts of use (unlike the Düsseldorf Local Chamber case (UPC_CFI_7/2023 of 3 July 2024), which is manageable in this respect). Clarification of the question may be reserved for any enforcement proceedings. The version of the application is also sufficiently specific due to the reference back to the injunction in conjunction with the grounds for the decision. In accordance with the wording of the application, the defendants are free to choose the appropriate and effective measures. The territorial limitation lacked by the defendants results from the withdrawal to the injunction, the limitation to the period after the grant of the patent in suit results from a reasonable assessment of the application and then the grounds for the decision. The distribution channels include all commercial end users.

178. The decision to provide the requested information is based on Art. 25 (a), Art. 67 (1) UPCA. The information is necessary for the calculation of damages and for the assessment of the method of calculating damages within the meaning of Art. 68 UPCA. The defendants cannot be agreed with that the owner of an SEP would from the outset be restricted to calculating damages against an infringer only by way of licence analogy. On the contrary, the European Court of Justice has ruled that the past-related claims are not affected by the antitrust context (ECJ Huawei v. ZTE ECLI:EU:C:2015:477, operative part no. 2). In this respect, it has already been decided in national case law that the scope of the claim for damages is only limited to the amount resulting from a licence analogy if the infringer can counter with its own claim for damages that is directed at the non-fulfilment of its claim to conclude a FRAND licence agreement and consequently it can demand to be placed in the same position as it would be under such an agreement (see German Federal Court of Justice GRUR 2020, 961 para. 109 et seq. - FRAND-Einwand,

GRUR 2021, 565 para. 137 - FRAND-Einwand II). The information on the origin and distribution channels serves to clarify the facts of the infringement and the possibility of claiming further co-responsible parties and being able to effectively stop further acts of infringement. Again, no rigid deadline for the provision of information was to be set (see above). Upon request, it was also to be ordered that the defendants provide the plaintiff with the information in a list structured for each month of a calendar year and according to infringing products in electronic form, which can be analysed with the aid of a computer. This serves the efficient enforcement of the right to information and takes account of the fact that an electronic statement that can be analysed with the aid of a computer is in any case the standard in a business-like accounting system. However, there was again no deadline set for the enforcement of this obligation.

179. The subject of the information is also the accounting requested in application IV.2 ("to disclose their books [...] by providing [...] the following documents"). On a reasonable interpretation of the argumentation submitted in this regard (statement of claim para. 247 et seq.), the request is not aimed at verifying the accuracy of the information and accounts provided within the meaning of the German Civil Code. R. 141 et seq. ORP, but rather requests the submission of accounts with supporting documents. This is also based on Art. 68(3) UPCA, R. 191 RP. In this respect, the Local Division agrees with the Düsseldorf Local Division (UPC_CFI_7/2023 of 3 July 2024 at F.I.2.b) that the rules contain a substantive right to demand information that the infringed party needs in order to be able to check the validity of the information and to obtain indications for its calculation of damages. Efficiency aspects in particular speak in favour of this, as further stages of the proceedings can be avoided. In addition, the patent proprietor can also request the submission of supporting documents for the information under Art. 67(1) UPCA, namely invoices or - if these are not available - alternatively delivery notes. Apart from the interest in the pure information that the

patent proprietor under Art. 67(1) UPCA, it is also worth recognising his interest in being able to check the accuracy of this information, at least on a random basis. The possibility of redaction in the pronouncement takes account of any confidential information (R. 191 p. 2, 190.1 p. 2 RP). However, there was again no time limit set by day for the enforcement of this obligation.

180. The requested auditor reservation allows an appropriate balance to be struck between the interest of the infringed party in receiving accurate information and the legitimate confidentiality interests of the infringer. Since the auditor may only work to the extent specified in the decision and is also obliged to maintain confidentiality towards the infringed party, the selection can also be made by the infringed party. Once again, the imposition of a fixed deadline was not appropriate.

181. The determination of the obligation to pay damages is based on Art. 68(1) UPCA and is justified by the established infringement. The defendants also acted negligently in any event. The requirement of a notice of infringement by the SEP proprietor in accordance with the case law of the ECJ does not imply a lack of fault, as already shown by the fact that the ECJ has not subjected the past-related claims to any further restrictions. Moreover, according to the relevant regulations, it serves to prevent any claims from becoming time-barred. The plaintiff is also entitled to demand the determination of the damages incurred by Panasonic Intellectual Property Corporation of America as the previous patent holder. Panasonic Intellectual Property Corporation of America has assigned its claims to the plaintiff in this respect.

182. Insofar as the plaintiff seeks provisional damages in the amount of € 250,000, this was to be granted in the present case in accordance with Art. 68(1) UPCA, Rule 119 of the Rules of Procedure, because the court fees alone in the amount of € 336,000 exceed this amount.

183. However, the request for publication of the judgement had to be rejected. In this respect, the decision under Art. 64(2)(a) UPCA is sufficient from the point of view of proportionality (see above). Circumstances that would justify a more extensive interest in the requested publication of the judgement have not been submitted and are not otherwise apparent.

184. With regard to the indirect infringement of the patent in suit in its method claim 13 by the challenged embodiments, the plaintiff's right to prohibit the continuation of the infringement follows from Art. 26(1) UPCA in conjunction with Art. 63(1) UPCA. The applicant also has a right to information and transmission of information pursuant to Art. 26(1) UPCA in conjunction with Art. 67 UPCA, Art. 68(3)(a), (b) UPCA in conjunction with Art. 67 UPCA. Art. 67 UPCA, Art. 68(3)(a), (b) UPCA in conjunction with R. 191 p. Alt. R. 191 S. 1 Alt. 2 of the Rules of Procedure as well as for payment of provisional damages and the determination of the award of damages on the merits (Art. 26(1) UPCA in conjunction with Art. 68(1) UPCA). Art. 68(1) UPCA, R. 119 RP). The threat of coercive measures is governed by Art. 63(2), 82(1) and (4) UPCA, R. 354.3 RP and applies mutatis mutandis to decisions on contributory infringement. Reference is also made to the above statements.

185. The award of costs is based on Art. 69(2) UPCA, Rule 118.5 RP. In view of the fact that the plaintiff was only marginally unsuccessful with regard to the scope of individual legal consequences, no share of the costs to be borne by the plaintiff is to be awarded.

186. Pursuant to Art. 82(2) UPCA, R. 118.8 S.2 VerfO, the court may make any order or measure subject to the provision of a security, which it must set. The local division is entitled to exercise its discretion when ordering the provision of security, whereby the interest of the plaintiff in the effective enforcement of its property right must be weighed against the interest in the effective enforcement of possible claims for damages in the event that the judgement is subsequently set aside. In the present case, the defendants rightly argue that the enforcement of such an order will prevent their core business, namely the sale of smartphones, in the countries concerned. This would not only result in the loss of all

This would not only result in a loss of current sales, but also future business losses. Potential end customers and existing commercial customers would switch to other manufacturers and possibly remain there permanently. This is accompanied by specific risks of increased and permanent market losses. These fears are exacerbated by the special features of smartphone sales. Smartphones are offered and distributed to a considerable extent via commercial resellers and via national telephone network providers, whereby the latter often work with long-term supply contracts. If the defendants were forced to stop deliveries to the network providers despite existing contracts, this would possibly lead to a permanent exclusion from the network providers' programme. This would result in the loss of an important distribution channel and it would be difficult to predict whether and when it could be reopened. The defendants leave the amount of the security deposit to the discretion of the court. In the present case [...] sufficient. It should be noted that the present judgement does not cover all EPC states, but only the contracting states of the UPCA listed in the judgement. Therefore, the security amount is sufficient without any further submission by the defendants, who have expressly left the decision to the discretion of the court without providing any information. The court further exercises its discretion to extend the group of credit institutions eligible to issue the bank guarantee to credit institutions authorised to do business in the European Union with regard to the fundamental freedoms of the European Union, contrary to the defendants' request. With regard to the equally enforceable claims for information/rendering of accounts and provisional damages, it was not necessary to order the provision of security as a precondition for enforcement in view of the lack of evidence that the plaintiff would not be able to financially compensate for the resulting damage if the first instance decision was not upheld.

187. The orders are only enforceable after the applicant has notified the court which part of the orders it intends to enforce and

has submitted a certified translation of the orders into the official language of the Contracting Member State in which enforcement is to take place and after the notification and the (respective) certified translation have been served on the defendant and the security has been provided, R. 118.8 of the Rules of Procedure. Since the defendants are sufficiently protected by the security ordered, it was no longer necessary to order that the defendants be authorised to avert enforcement.

FRAND objection

188. The above legal consequences are also not precluded by a FRAND objection based on Art. 102 TFEU. While the plaintiff acted in accordance with the ECJ's programme of obligations addressed to it as SEP holder, the defendants did not participate in the negotiations for a FRAND-compliant licence in accordance with the negotiation programme developed by the European Court of Justice in Case C-170/13 - Huawei v. ZTE, ECLI:EU:C:2015:477, in a targeted manner and in accordance with the practices of a party seriously interested in taking a licence.
189. The Unified Patent Court applies Union law in its entirety and respects its primacy, Art. 20 UPCA. Union law is the primary source of law to be applied by the Unified Patent Court, Art. 24(1)(a) UPCA. In the case of questions concerning the correct interpretation of European law, the Court of First Instance may refer questions relevant to the decision to the CJEU, Art. 267 TFEU. The decisions of the ECJ are binding on the Unified Patent Court, Art. 21 UPCA.
190. However, the present case - especially for the Court of First Instance - does not give rise to a referral to the ECJ, even against the background of the amicus curiae brief of the European Commission, which the European Commission submitted to the Higher Regional Court of Munich on 15 April 2024 under the reference 020078-24 MLO / DLF and with which the European Commission "encourages" the court there to refer the case to the ECJ. Rather, the ruling body is of the opinion that the only questions that arise in the present case are

The Court of Justice has developed balanced principles which allow the courts called upon to apply the law in individual cases to make a proper assessment of the case in question. At the same time, the opinion of the European Commission - which is admittedly not binding on the constitutionally independent courts - can be taken into account. The document has also been introduced in the present proceedings and was discussed intensively with the parties during the oral hearing.

191. In the *Huawei v. ZTE* decision, the ECJ established a negotiation programme that has since been binding on the courts of the Member States - unlike the courts of the United Kingdom. Since then, the courts of the Member States have applied this negotiation programme and have continued to fill in the details on the basis of the cases submitted for decision (see Dutch Court of Justice The Hague, case number: 200.219.487/01, of 2 July 2019 - *Philips v. Wiko*; the same case number: 200.233.166/01, judgment of 24 December 2019 - *Philips v. ASUS*; German Federal Court of Justice GRUR 2020, 961 - FRAND-Einwand, GRUR 2021, 565 - FRAND-Einwand II). The ruling body is of the opinion that the ECJ's negotiation programme is not solely focused on determining the respective licensing conditions, which would be stripped of an assessment of the respective conduct of the parties in the context of the negotiations. Rather, the central concern of the decision is to establish a negotiation programme with reciprocal obligations that also serves to assess the primary EU law question of whether the enforcement of the prohibition and recall rights from the patent is subject to antitrust restrictions. The determination of a FRAND licence rate, if applicable, is only one component of this programme. Accordingly, in the present case, a local division of the Unified Patent Court as a common court of the Member States is called upon to decide for the first time. This gives rise to the following comments.

192. In its leading decision *Huawei v. ZTE*, the European Court of Justice set out a negotiation programme that shows the parties their respective obligations in the context of negotiations for a licence to a standard essential patent and enables the courts to assess the conduct of the parties on the way to a licence. According to settled case law of the ECJ (*loc. cit.* para. 46), the exercise of an exclusive right associated with an intellectual property right, in this case the right to bring an action for infringement or recall, is one of the prerogatives of the holder of an intellectual property right, so that it cannot in itself constitute an abuse of a dominant position, even if it emanates from an undertaking in a dominant position. However, the exercise by the holder of an exclusive right associated with an intellectual property right may, in exceptional circumstances, constitute abusive behaviour within the meaning of Art. 102 TFEU (*ibid.* para. 47). It should be recalled - particularly in light of the decision of the UK Court of Appeal - that the ECJ has stated that account must be taken of the need to safeguard intellectual property rights, which is one of the purposes of Directive 2004/48. In accordance with Article 17(2) of the Charter, the Directive provides for a number of remedies intended to ensure a high level of protection of intellectual property in the internal market and the right to effective judicial protection guaranteed by Article 47 of the Charter, which comprises several elements, including the right of access to justice (ECJ *loc. cit.* para. 57). This requirement of a high level of protection of intellectual property rights implies that their owner cannot, in principle, be deprived of the possibility of taking legal action to ensure that his exclusive rights are effectively respected and that the user of those rights, if he is not their owner, must in principle obtain a licence before any use (ECJ *loc. cit.* para. 58).

193. The negotiation programme developed by the ECJ serves these principles. An assessment of the conditions of a FRAND licence that ignores the steps established by the ECJ in the sense of a purely economic determination of the licence amount without taking into account the relevant conduct of the parties involved in the negotiations would not be a good idea.

parties cannot therefore be upheld under European law and would violate mandatory law in the Member States.

194. According to the ECJ's decision, the SEP holder must first inform the patent user of the patent infringement of which he is accused before bringing an action for an injunction. In doing so, he must identify the SEP in question and state how it is alleged to have been infringed (ECJ loc. cit. para. 61). It had already become established in the cited case law of national courts that the sending of claim charts is sufficient for these purposes in any case (see, for example, from national case law, Court of The Hague, case number 200.233.166/01 of 24 December 2019, para 4.157 et seqq. - Philips vs ASUS; Higher Regional Court Karlsruhe, judgement of 9 December 2020, 6 U 103/19 - Mobilstation; Regional Court Mannheim, judgement of 19 August 2016, 7 OD 2016, para 4.157 et seqq. 19.08.2016, 7 O 19/16 - Secondary station; judgement v. 29.01.2016, 7 O 66/15 - control channel; LG Düsseldorf, judgement v. 11.07.2018, 4c O 81/17 para. 108). Insofar as the European Commission takes the view in its opinion in this context that this reference must be made in the letter itself (amicus curiae letter para. 65), such a formalistic understanding cannot be accepted. It is true that a reference to a generalised website of the SEP holder, which does not contain any easily accessible information on the specific patent in suit, may be too little to be regarded as sufficient notice. For good reason, however, the ECJ judgement does not impose any strict formal requirements at this point, but leaves it up to the courts of the Member States to decide on a case-by-case basis. Particularly in the case of an allegation of infringement of a large number of standard-relevant patents, a notice in the formalised form deemed necessary by the Commission may lead to confusion rather than the desired transparency.

195. In the present case, it was sufficient to make the defendants aware that they were also accused of infringing patents valid in the EU legal area and thus to encourage them to deal with the further steps of the ECJ's balanced negotiation programme that the plaintiff - in addition to a large number of other claim charts requested by the defendants - also submitted a claim chart.

chart concerning the Chinese family member of the patent family, which includes the patent in suit. The claim chart contained an explicit reference to the patent in suit. If the defendants argued at the oral hearing that the Chinese patent had a broader scope of protection and therefore the relevance of the patent-in-suit for the standard could not be assessed without further effort and explanation, this behaviour provides an example of how an implementer seriously interested in a FRAND licence should not behave. Such an implementer would have raised a corresponding complaint at least once if it had actually had problems of understanding and asked for a more in-depth discussion. The defendants, on the other hand, did not raise any such objection, but only repeatedly requested further claim charts for other patent families, only to then withdraw without further discussion of all the requested material to the effect that generally valid findings would in any case result from the sources they consulted as to what proportion of declared patents is generally actually essential for the standard (cf. in detail below). It does not correspond to the practices of business transactions, to which the ECJ refers (*loc. cit.* para. 65, 67), to withdraw to formalistic objections, as the defendants do in such a situation, and to deduce from this that no further obligations arise for one's own side with regard to targeted negotiations in the direction of a FRAND licence. The infringement notice was sufficient.

196. The patent user must then express its intention to conclude a licence agreement on FRAND terms in a further step - also before filing an action (ECJ *loc. cit.* para. 63). The significance of this step in the ECJ's negotiation programme is assessed differently, at least with regard to the weighting of this step in the negotiation programme. The Federal Court of Justice explained this in para. 83 of its FRAND decision (BGH GRUR 2020, 961 para. 83):

"Therefore, after the first indication, it is not sufficient to establish further obligations on the part of the dominant patent proprietor if the infringer merely shows a willingness to conclude a

to consider entering into a licence agreement or to enter into negotiations as to whether and under what conditions the conclusion of a contract could be considered (see Opinion of Advocate General Wathelet of 20 November 2014 - C-170/13 para. 50). Rather, the infringer must clearly and unambiguously declare its willingness to conclude a licence agreement with the patent proprietor on reasonable and non-discriminatory terms and must also subsequently participate in the licence agreement negotiations in a targeted manner. The High Court of England and Wales (J. Birss) has aptly expressed this by stating that "a willing licensee must be one willing to take a FRAND licence on whatever terms are in fact FRAND" (EWHC, judgment of 5 April 2017, [2017] EWHC 711 (Pat) para. 708 - *Unwired Planet v Huawei*)."

197. According to the European Commission, this criterion, known as "willingness to licence", should be assessed solely "on the basis of the content and circumstances of the declaration, but not on the basis of subsequent conduct during any negotiations" (amicus curiae letter para. 7, 75, 80 et seq.). The first two steps of the framework programme preceded the start of the negotiations, in particular the SEP holder's offer. Therefore, the assessment of their existence could not be linked to specific licence conditions or licence fees (ibid. para. 82). The patent user's willingness to licence could not be determined on the basis of its subsequent conduct during the negotiations; the second step was merely a formal step as a prelude to negotiations. In particular, this step must not be confused with the subsequent steps, the offer of the SEP holder and the counter-offer of the patent user (ibid. para. 84 et seq.).

198. The European Commission agrees that the initial declaration of willingness to take a licence is the prelude to further negotiations. It must not be limited to mere lip service, but must be serious in the sense of the statements of the BGH. However, consideration of the respective declaration alone does not generally lead to any further examination of whether a patent user is seriously interested in taking a licence. A corresponding declaration, even if it is based on the wording of the cited UK or BGH decision or adopts it in a clichéd, identical wording, is not in itself a suitable indicator for assessing whether the respective user is actually serious about his declaration.

For this purpose, the respective behaviour must always be considered in an overall view. However, the Commission correctly addresses the fact that the examination of FRAND-compliant behaviour must not focus solely on the willingness to license in the sense of an analysis of the user's behaviour alone. It is therefore incorrect to "willingness to licence" on the basis of the patent user's counter-offer by again using this as an indication for or against the seriousness of the user's behaviour without first considering the SEP holder's offer. With such an understanding, there is a considerable risk that the necessary examination of the offer of the SEP holder bound by antitrust law will not be carried out at all or will be cursory at best. This would not do justice to the ECJ's decision. It is precisely this point that is criticised by the European Commission in the context of the decision of the Regional Court of Munich I that it analysed. Rather, the SEP holder's offer must always be checked for its FRAND compliance if there is sufficient initial willingness to take a licence. This step must not be omitted or only carried out very cursorily. In its referral in the Huawei v ZTE case, the Düsseldorf Regional Court had already formulated the question of whether Art. 102 TFEU places special temporal and/or qualitative requirements on the willingness to negotiate and stated in the referral that it could not be satisfactory to use the term "willingness to negotiate" as a criterion for such abuse, as this term leaves room for many interpretations (ECJ loc. cit. para. 38). In this sense, an examination that intends to comply with the case law of the ECJ must not be content with merely analysing the conduct of the patent user for indications that are then singled out in order to criticise an insufficient willingness to license without seriously examining the SEP holder's offer. Such an approach is already contradicted by the fact that the ECJ deliberately did not want to leave it at the so-called Orange Book case law of the Federal Court of Justice. On the contrary, Advocate General Wathelet stated in his Opinion (ECLI:EU:C:2014:2391 para. 51 f.):

"In my opinion, the simple transfer of the judgement Orange-Book-Standard of the Federal Court of Justice or the press release to the present case would result in a situation in which the SEP holder, the user of the teaching of the patent or the consumer would receive either too much or too little protection. A middle way must therefore be found."

199. In this sense, the ECJ initially declared the SEP holder to be obliged to submit a FRAND offer:

"As the Advocate General stated in point 86 of his Opinion, if the holder of an SEP has made a commitment to the standardisation organisation to grant licences on FRAND terms, he can be expected to make such an offer. Moreover, where neither a standard licence agreement nor licence agreements already concluded with other competitors have been published, the SEP holder is in a better position to verify whether its offer complies with the condition of equal treatment than the alleged infringer."

200. The application of the Orange Book case law of the German Federal Court of Justice (BGH GRUR 2009, 694) should not continue. According to this case law, the patent user must first make an unconditional offer to conclude a licence agreement, which the patent proprietor may not reject without violating its obligations under antitrust law not to unreasonably hinder or discriminate against the licence seeker. Consequently, an interpretation of FRAND case law in such a way that would de facto lead to the application of Orange Book case law is also incorrect. In this respect, the Commission must be agreed that the sequence of steps in the ECJ's negotiation programme must not be mixed up in such a way that the examination of the SEP holder's offer is pushed too far into the background.

201. To the extent that the European Commission's view that the willingness to licence to be expressed prior to filing an action forms the starting point for further negotiations can be accepted, it has not yet been clarified to what extent the further conduct during the negotiations is to be included in the assessment. From the point of view of the adjudicating body, the seriousness of the initial declaration of willingness to take a licence, understood in this narrower sense, must be assessed on the basis of the immediate circumstances accompanying it. However, this does not mean that the further behaviour of both parties during the subsequent negotiations should be excluded from the assessment. Rather

both the SEP holder and the implementer must behave "in accordance with commercial practice" during the negotiations and work in good faith towards the conclusion of a licence agreement. Their conduct must be assessed according to whether it takes sufficient account of the fundamental objective of the ECJ's negotiation programme to achieve the timely conclusion of a FRAND licence agreement on a primarily private-autonomous basis in targeted negotiations. This requirement results in obligations to be concretised for the individual case at each stage of the negotiations. Nor is it in line with the ECJ's negotiation programme to examine the willingness of the implementer to take a licence alone, without sufficiently examining the SEP holder's offer, just as it would be insufficient to consider only the opposing offers and counter-offers after affirming the first two steps of the examination and to ignore the further conduct of the parties. This is because whether a (counter)offer meets FRAND criteria can only be assessed on the basis of the specific negotiations and the behaviour of the parties. Just as the implementer cannot make a favourable offer without sufficient knowledge of any licensing conditions granted to third parties, the SEP holder cannot make a favourable offer if the implementer deliberately leaves him in the dark about the extent of his acts of use and his economic framework conditions, such as the sales prices demanded by him on the market, and if he does not provide any information on the economic framework conditions of his actions, which conversely must be sufficiently plausible for the SEP holder - depending on the progress of the negotiations. The depth of the court's examination of the plaintiff's conduct is largely based on the points the licence seeker has objected to vis-à-vis the plaintiff in the negotiation process and, conversely, what information he has made available to the holder in order to be able to make him, the user, an offer tailored to his circumstances. Objections raised only in the course of the proceedings before the court against the background of the threatened injunction alone are not sufficient. Except in extreme circumstances, the patent user is always obliged to respond to an offer from the SEP holder and at least to provide his

to raise objections against this and to request improvements (cf. from German case law BGH GRUR 2021, 585 para. 71 - FRAND- Einwand II; OLG Karlsruhe GRUR 2022, 1145 para. 152 et seq. - Steuerkanalsignalisierung II.).

202. This interplay of mutual obligations in the negotiations is again exemplified by the present case. The defendants refused to provide the plaintiff with sufficient information about their acts of use. Even after rejecting their counter-offer, they refused to provide the plaintiff with information on their actual acts of use. Rather, the defendants referred the plaintiff solely to data from economic data services of the provider IDC, without making these plausible at least for exemplary meaningful periods of time by providing information on their own genuine acts of use. In this respect, the defendants cannot expect an offer from the plaintiff that fully reflects the circumstances affecting them if they are not willing to make these circumstances accessible. Insofar as the defendants object in this context that the plaintiff, for its part, also used IDC data to demonstrate the comparability of the conditions offered to the defendants on the basis of third-party licence agreements, the defendants misjudge two things: Firstly, the third-party licence agreement partners have a legitimate interest in confidentiality insofar as their specific transactions are affected. In any case, the SEP holder is therefore not obliged to make such figures directly accessible to a negotiating partner if it is still open whether the latter is seriously negotiating the conclusion of a FRAND licence. The implementer cannot demand more disclosure from the SEP holder than it is prepared to disclose itself. In addition, the SEP holder does not have this information in the case of blanket licence agreements because there are no reporting obligations regarding acts of use to be remunerated in certain periods of time. Secondly, the defendants fail to recognise that, as a patent infringer using the technology (see above) who, unlike the plaintiff's settlement licensees, drags out the negotiations over years, they cannot demand to be in agreement in every respect with the cooperative licence agreement partners of the SEP holder.

The SEP holder is entitled to be treated equally by all licence holders who resolve any differences within a short period of time and participate in negotiations in a targeted manner and bring them to a conclusion. Therefore, it may well be unobjectionable under antitrust law if an SEP holder makes do with data from commercial services for the negotiations if the prospective licence holder in question works constructively and swiftly towards the conclusion of such a licence. On the other hand, the ECJ has also clearly stated that the patent user using the technology unlawfully must provide information and security at the latest after its counter-offer has been rejected. The plaintiff's argument can be accepted in that the information serves the purpose of assessing whether the security offered sufficiently covers the risk of insolvency of the patent infringer. In this context, the SEP holder, who has himself submitted an offer that is to be assessed as FRAND-compliant under the respective circumstances of the negotiations, does not have to be satisfied with data from commercial services compared to a patent infringer who drags out the negotiations.

203. The examination of the SEP holder's offer must be based on the above statements. The adjudicating body is of the opinion that the SEP holder must not only state the mere mathematical factors with which he calculates the licence fee when submitting his offer. Rather, the SEP holder is required to plausibilise, in the manner possible in the current state of negotiations, why it believes that the offer it submits can be considered FRAND-compliant. This follows from the ECJ's statements in para. 64 of its decision. The SEP holder has the better knowledge of its licensing practice and should communicate this to the patent user so that the latter can react to it in good faith. This also corresponds to the understanding of the judgement developed by the Commission, which states this in para. 50 f. of the amicus curiae brief:

"The background to this distribution of obligations is that in the absence of a published standard licence agreement and if the licence agreements concluded with other users are not published, only the patent proprietor regularly knows the terms on which he has already concluded licence agreements and which terms are therefore non-discriminatory. The

The patent proprietor must examine the licence offer in a fourth step and respond to it within a reasonable period of time."

204. The extent of the explanations depends on the stage reached in the negotiations between the parties. It is therefore not necessary in every case - including the present case - to disclose the names and conditions of the third-party licence agreements directly in order to check plausibility (see below for details).

205. Based on these principles, the following applies to the present case:

Sufficient notice of infringement before filing suit

206. As stated above, the reference to the infringement of the patent in suit by the plaintiff was sufficient. The plaintiff sent Guangdong Oppo [...] a list of which of its essential patents it considers to be infringed for the 3G and 4G standards (Annex KAP FRAND 1). Explicit designations of the defendants' 4G-capable products can be found in the presentation of [...] (Annex VB-F 3), whereby the defendants were already aware that the allegation of infringement was directed against all 4G-capable products. The plaintiff submitted an updated list of patents deemed to have been infringed [...] (Annex KAP FRAND 2). This also contains a reference to the patent in suit. In addition, the plaintiff [...] also sent claim charts relating to the Chinese family member of the patent in suit (ZL201310315589.X). According to the plaintiff's uncontradicted submission at the hearing, this also contained an explicit reference to the patent in suit. Objections that this was not sufficient for the comprehensibility of the infringement allegation were raised by the defendants for the first time at the hearing. This is late. In addition, the objection was not justified on the merits, since the defendants objected that the Chinese patent had a broader scope of protection than the patent in suit. If there had been a need for clarification here, the defendants could and should have asked the plaintiff as a cooperative licence seeker. In the duplicate, the

The defendant, on the other hand, withdrew to the formalistic standpoint that a reference to the patent in suit was required in the notification letter itself. As already explained, this argument is not convincing.

Declaration of willingness to licence by the defendants before filing suit

207. According to the standards set out above, the defendants have expressed their initial willingness to take a licence in a sufficient manner to serve as a starting point for further negotiations. The statements they made before the action was filed made it sufficiently clear that the defendants were interested in taking a licence and that the plaintiff, as the holder of the SEP bound by antitrust law, was therefore obliged to enter into constructive negotiations with the defendants, which included in particular the submission of a FRAND offer. The ruling body is of the opinion that insisting on a certain wording at this point does not promise any further insight into the actual intention of the user. Even a declaration that fully adopts the wording of the decision of the High Court of England and Wales quoted by the Federal Court of Justice ("a willing licensee must be one willing to take a FRAND licence on whatever terms are in fact FRAND") can prove to be mere lip service. The Federal Court of Justice also correctly states in this context that "the requirements to be made in detail [elude] a general definition" (BGH, judgment of 24 November 2020 - KZR 35/17 (FRAND-Einwand II), GRUR 2021, 585 para. 59). Against this background, the defendant's statements at the beginning of the negotiations appear sufficient to be regarded as a sufficiently serious prelude to further negotiations. In their e-mail [...] (Annex VB F-1), the defendants made a sufficient declaration and named a specific contact person for further talks [...]. The plaintiff did not object to this statement as insufficient, but took it as an opportunity to start the negotiations [...], to clarify the modalities of a first meeting and then to submit initial ideas to the defendants in the form of term sheets. Circumstances which would show that the defendant's statement at this point in time was already not

was sufficiently serious and unsuitable to enter into concrete discussions with them.

Submission of an offer to conclude a FRAND licence by the applicant

208. The plaintiff then presented [...] the economic cornerstones of an offer in a Zoom meeting (Annex VB-F 3, p. 4). In the presentation, the plaintiff did not limit itself to requesting unspecified prices, but attempted to clarify its position as to why it considered the prices to be appropriate. This is considered in more detail below:

209. [...].

210. The plaintiff further explained that she [...].

211. The plaintiff has also shown how it derives its licence fees by means of a top-down analysis (Annex VB-F 3, slides 17 et seq.). It has [...].

212. With these statements, the plaintiff has already clearly set out its demands at an early stage and sufficiently plausibilised for the further negotiations why it believes it is entitled to submit a FRAND-compliant offer. If the defendants, as cooperating licence seekers, had still had questions, e.g. on the non-discriminatory nature of the offer, they should have asked them immediately or shortly afterwards.

213. The defendants, on the other hand, insist in their argumentation that these statements should not yet be regarded as an initial offer because a written contractual offer is required. The court cannot agree with this view. What can be demanded of the SEP proprietor cannot be determined in a generalised, formalistic manner. The requirements for the behaviour of the patent proprietor and the behaviour of the user of the invention are mutually dependent. The yardstick for the examination is what a reasonable

party that is interested in the successful conclusion of the negotiations in a way that is in the interests of both parties would do to promote this goal at a certain stage of the negotiations (in this sense also BGH FRAND II, loc. cit., para. 59). At the beginning of the negotiations, it is not in line with customary business practice to directly confront each other with draft contracts ready to be signed as long as not even the central economic points have been clarified. Therefore, it is also not the behaviour of a patent user negotiating in good faith in the direction of a FRAND licence to nevertheless insist on this in a formalistic manner in its argumentation before the court. Rather, the SEP holder's offer should represent the constructive starting point for further negotiations towards the conclusion of a FRAND licence agreement, because the individually appropriate contractual terms in complex patent licence agreements must be adapted to the respective economic framework conditions (Court of Appeal The Hague GRUR Int 2020, 174, 179 para. 4.34; in this sense also BGH loc. cit. FRAND II para. 70). Rather, it is sufficient if the SEP holder's offer allows the patent user to recognise the essential economic framework conditions of a proposed licence agreement and, if necessary, to react to this with a deviating counter-offer. As a rule, this does not require a written contractual offer that is differentiated in all secondary points and ready to be signed. Rather, it is up to the patent user to request the submission of such a formal contractual offer if, contrary to customary practice, he wishes to receive it at this stage of the negotiations. The decisive factor is not the concept of an offer under contract law, but a concept of an offer that is to be understood economically in the context of European antitrust law. [...]). Rather, they would have been required to take a concrete position on the plaintiff's ideas at this stage and to raise objections, submit counter-proposals or raise economic issues to be clarified. Raising such questions by means of a private expert opinion only before the court cannot replace this obligation to co-operate.

214. In addition, it had to be acknowledged that the plaintiff [...] put [...] in relation and also tried to show why, in her opinion, she was demanding reasonable licence rates (see Annex VB FC 5 pages 14 ff., see summary of the results of the analyses on slide 44). In addition, the plaintiff defined further key points for a licence agreement (cf. slide 46). By this time at the latest, the plaintiff had submitted the key points of an offer.

215. The plaintiff then submitted to the defendant [...].

216. Nevertheless, in this presentation the plaintiff referred to [...] In the opinion of the court, the plaintiff did not have to provide the defendants with more information at this time. In particular, under these circumstances, it did not have to submit the licence agreements with third parties used for comparison purposes.

217. [...].

218. [...].

219. [...].

220. [...].

221. This offer thus represents the end point of the plaintiff's proposals on the way to a FRAND licence and will be examined in more detail below. In this context, the argument that the extent of the concession in relation to the initially expressed ideas can already prove the FRAND-incompatibility of the offer of the respective negotiating party must be rejected on its merits. This is certainly not the case if the concession can be explained by the course of the negotiations and is based, for example, on new information exchanged in this context, if it is a response to concerns expressed by the other side or if one negotiating side

offers lump-sum discounts out of its own motivation in order to conclude a contract quickly. [...] As shown above, the plaintiff used objective criteria to justify in each case why it represented and changed the economic position it had taken at the respective stage of the negotiations. From the point of view of the adjudicating body, it has always focussed on comprehensible aspects and has also presented its considerations in such a way that a patent user seriously interested in the progress of the negotiations is able to take a position on the content.

222. The offer last submitted to the defendants therefore appears to be FRAND-compliant from the point of view of the adjudicating body at the relevant time during the negotiations. Likewise, the settlement licence agreements submitted in the course of the present proceedings in response to an order show that the plaintiff was not tempted to make inaccurate claims to the defendants regarding its settlement licence partners. [...] Although - depending on the stage reached in the specific negotiations - it may not immediately be necessary to disclose one's own sales data in full, a licence seeker negotiating in good faith can nevertheless be expected to make available such data for certain partial periods of time which make it comprehensible to the SEP holder as a whole why the licence seeker feels entitled to calculate on its deviating basis, at least in order to check the plausibility of its own objections to the figures used by the other party. [...] As the plaintiff rightly argues, the patent user must provide information after rejection of its counter-offer in a form that enables the SEP holder to assess whether the security to be provided is sufficient and, in particular, covers an insolvency risk (ECJ Huawei/ZTE para. 67). The defendants did not provide such information at any time. [...].

223. Moreover, the defendants cannot now justify their lack of constructive negotiation prior to filing suit by subjecting the now available factual material to a private expert assessment

and derive a wealth of objections from this. It is insufficient to substantiate the objections only in the court proceedings by means of commissioned expert opinions, which are also only partially explained in the main pleadings with regard to their systematics. Rather, it is advisable to present the objections in close temporal connection to the presentation of the opponent's calculation approach and then, without the need for judicial assistance, to give the opponent the opportunity to overcome the existing discrepancies by means of suitable negotiation proposals on the way to a FRAND licence.

224. Even if the now disclosed settlement licences are included in the assessment of whether the plaintiff must be prevented from enforcing the asserted injunctive relief and the other forward-looking claims under the patent for antitrust reasons, the plaintiff's offer described above does not prove to be FRAND-inconsistent, but rather FRAND-compliant. In this regard, the plaintiff must first agree that FRAND is a corridor. This view now appears to be generally recognised. However, there is not just one FRAND offer, but several forms of a licence agreement within the bandwidth, all of which can satisfy FRAND criteria. Therefore, the plaintiff also has room for manoeuvre within this range. For antitrust reasons, it is not obliged to submit the cheapest offer that is still within the corridor. Nor is it obliged to use a calculation method favoured by the other party. From the point of view of reasonableness, it may only not deviate in a way that is no longer justifiable from the circumstances used as a benchmark, whether these circumstances lie in its own comparative licences, which regularly have the strongest indicative effect, or in licence agreement arrangements used for comparison purposes, which have been discussed in court decisions, for example, and which can be applied to the specific circumstances.

225. [...].

226. [...].

227. [...]

228. [...].

229. [...].

230. [...] The defendant's counteroffer therefore does not prove to be FRAND-compliant.

231. The decisive circumstance for this discrepancy is already the defendant's approach, which is to be assessed as non-FRAND-compliant. [...].

232. Moreover, the defendants cannot do the opposite [...] If one were to recognise this system, this would privilege a user who operates hold-out. The defendants apply double standards without sufficient grounds.

233. But also in other respects, the defendants did not act in good faith as required by the practices of a user seriously interested in taking a licence. The case law of the ECJ is to be understood correctly with the plaintiff as meaning that the information to be provided after rejection of the counter-offer should allow the patent proprietor to gain an overview of the scope of the actual acts of use. This is the only way to enable him to check whether the security offered is sufficient. The user must disclose the extent of his acts of use. If the patent user wishes to obtain a licence in return for a lump sum, he is also regularly required to disclose sales figures to the patent proprietor from this point of view so that the latter can assess the extent of the acts of use that are to be licensed in return for a lump sum payment.

234. Furthermore, the security offered by the defendants is also inadequate for the reasons put forward by the plaintiff. Due to the wording in the deed of guarantee, a total default is to be feared in the event of insolvency. Neither can an insolvency administrator withhold his consent in the event of insufficient assets

that the guarantee will be drawn, nor can it be expected with sufficient certainty in this case that a final judicial clarification can still be brought about, because insolvency regularly brings the proceedings to a standstill in this respect (cf. only Rule 311.1 VerfO).

235. Finally, the defendants' procedural conduct must also be characterised as contrary to good faith, as it is characterised by self-contradictory conduct. In this respect, the defendants wanted to contest the jurisdiction of the Unified Patent Court with their objection until the oral hearing. This is contradicted by the fact that they then nevertheless requested the determination of a FRAND rate by way of a FRAND counterclaim. The defendants only saw themselves in a position to discontinue the opposition - albeit under sharp protest - after the panel's firm indication. Furthermore, the defendants' requests in the context of the FRAND counterclaim were initially aimed solely at having the panel determine a territorially limited licence rate, which was to be restricted to the EPC contracting states, the USA and Japan. This is in contradiction to its own argumentation that FRAND is solely the determination of a global FRAND rate. However, this contradiction was also only responded to upon judicial notice and at least the new main claim of the FRAND counterclaim was directed towards a global lump-sum licence payment. However, the defendants have continued to adhere to the territorially limited determination approach in the context of the alternative claim groups. According to the first alternative claim, the main part of the licence is to be determined by the Beijing Intellectual Property Court and [...]. In this respect, in the opinion of the adjudicating body, it is also not in line with the approach of a user working in good faith towards the conclusion of a licence agreement to further complicate the already complex situation by bringing FRAND rate determination proceedings for sub-regions of the world before different courts in the world between whose states there are no treaties establishing a priority order between the courts seised. This is because the provision cannot be determined with a clear territorial distinction. On the contrary, there is a considerable risk that the respective

courts pursue different approaches when determining the FRAND rate. This in turn harbours the risk of contradictory rulings, meaning that appeals are likely to be pursued in different jurisdictions. This is not conducive to the speedy conclusion of global disputes. In addition to the court in Beijing and the UPC, the defendants' exclusive licence holder in Italy has also recently initiated a determination procedure limited to Italy before the national court in Milan. Furthermore, the defendants emphasise the determination proceedings between the plaintiff and the Xiaomi group of companies before the High Court of England Wales. The conflict is particularly evident here because Italy is also a contracting state of the UPCA and the present action explicitly also covers acts of use in Italy.

FRAND counterclaim

236. Although the defendant's FRAND counterclaim is admissible, it had to be dismissed as unfounded.

Responsibility of the UPC:

237. The UPC has jurisdiction for the counterclaim filed by the defendants together with the statement of defence, which is aimed at determining a FRAND licence. Jurisdiction follows from Art. 32(1)(a) UPCA. Accordingly, the court has exclusive jurisdiction over actions for actual or threatened infringement of patents and related defences, including counterclaims relating to licences. This includes not only disputes relating to existing licences to a patent, but also actions aimed at the conclusion of a licence.

238. The fact that the claim pursued by the defendants in the present case - in addition to contract law based on the plaintiff's ETSI FRAND declaration - is derived from European antitrust law does not change this. This is because the Unified Patent Court is a common court of the contracting member states and

is therefore subject to the same obligations under Union law as any national court of the Contracting Member States, Art. 1 UPCA. The court applies Union law in full and respects its primacy (Art. 20 UPCA) and bases its decisions on this (Art. 24(1)(a) UPCA). This also includes the mandatory application of EU antitrust law, in particular Art. 102 TFEU.

239. In the present case, the defendants derive their claim to a FRAND licence on the one hand from contract law principles, which they see in the ETSI FRAND Declaration, and on the other hand from Art. 102 TFEU. Even if one were to assume that this was a claim based on Art. 102 TFEU and with which the infringer demands that the SEP holder refrain from abusing its dominant market position by refusing to grant it a FRAND licence, this does not change the jurisdiction of the UPC. This is because, in essence, the claim is aimed at defending against the monopoly right conferred by the state, the granted patent, and the powers derived from it, the injunctive relief and the further claims for removal and destruction directed to the future, by arguing, on the basis of the generally recognised legal principle of good faith, that there is a corresponding claim for performance under antitrust law which can be invoked against the exercise of the powers under patent law. The contracting member states of the UPC were aware of this connection when the UPC was created and the associated transfer of national judicial sovereignty. The connection between patent law and antitrust law is in any case inherent to the patent and indissoluble. Due to the obligations of the Member States under European law and thus also of the UPC, the task assigned to the UPC is the same as that of the national courts when dealing with patent disputes, if the Agreement is interpreted correctly. Here, the national courts decide on both the patent law dimension and the inherent antitrust law dimension - due to the nature of patent law as an exclusive right. This is also illustrated by the fact that before national courts, for example in Germany or the Netherlands, it is regularly

the national patent litigation chambers also co-decide on the antitrust aspects of the case and even the German Federal Court of Justice has formally decided SEP cases through the antitrust senate, but a member of the patent senate was always appointed to report on SEP cases in order to bring in the necessary patent law expertise. Therefore, a reference to the fact that in national proceedings a panel responsible for antitrust law has formally ruled on SEP cases on the basis of the corresponding provisions of a business allocation plan drawn up by the Presidium of the Court would be substantively meaningless.

240. Accordingly, Advocate General Wathelet already stated in his Opinion on Case C-170/13 *Huawei v ZTE* that, against the background of the obligations under European law, it cannot be held against the alleged patent infringer if it demands that FRAND conditions be set by a court or arbitral tribunal (see Opinion of Advocate General Melchior Wathelet of 20 November 2014 Case C-170/13 para. 93: "If no negotiations have been entered into or if they have remained unsuccessful, the behaviour of the alleged patent infringer cannot be regarded as hesitant or as not seriously intended. November 2014 Case C-170/13 para. 93: "Moreover, where no negotiations have been entered into or where they have been unsuccessful, the conduct of the alleged infringer cannot be regarded as dilatory or not serious if the latter requests that those terms be determined by a court or an arbitral tribunal.""). The Convention offers no indication that the member states, in transferring judicial sovereignty to the UPC, contrary to the requirements of European law, intended to cut off the cognizance powers of the common court, which also replaces the national courts, and to cut off the uniform decision on patent law issues on the one hand and antitrust law issues on the other. If the antitrust claim for the grant of a licence on FRAND terms can be raised as an objection to the patent claims concerned, there is no reason not to regard counterclaims based on this as counterclaims within the meaning of Art. 32(1)(a) UPCA.

241. In this respect, it should also be noted that the UPC already has exclusive jurisdiction for SEP disputes that have their origin in a European patent with unitary effect. The same applies to European bundle patents that are not the subject of an opt-out after the expiry of the transitional provision pursuant to Art. 83 UPCA. A national court would therefore have no jurisdiction for these cases. If, for example, an antitrust claim for a FRAND licence were to be asserted before a national court and the preliminary question of the antitrust examination is a question of patent law - such as whether the teaching of the patent in suit is actually essential for a standard and thus whether a monopoly position exists due to its standard essentiality - this question would have to be clarified by the UPC. However, since the UPC would in turn be required to decide on any restriction under antitrust law when deciding whether an application for an injunction can be granted, the indissolubility of the question of patent and antitrust law becomes apparent. The same would apply if the patent proprietor were to file only a limited application for injunctive relief before the UPC, whereby the enforceability of the injunctive relief as a minus to the unrestricted injunction would be subject to the condition that the patent user refuses to comply with a FRAND provision assigned to the court by refusing to cooperate as required for the implementation of the FRAND licence agreement determined by the court.

Unfoundedness of the defendant's counterclaims

242. However, the defendant's applications are not justified in the form in which they have been submitted.

243. The main claim must be dismissed because the plaintiff cannot be obliged by the court to accept the defendants' FRAND-inconsistent offer of [...] pursuant to Annex VB-FC 14. As explained above, the lump-sum licence fee submitted by the defendants in the offer to conclude the contract is not FRAND-compliant within the meaning of the case law of the ECJ, if only because the lump-sum licence fee offered was not calculated on the basis of the defendants' own acts of use. The extent of the actual use

the defendants persistently fail to disclose this, but instead calculate what they consider to be the appropriate global blanket licence solely on the basis of the IDC data disputed by the plaintiff. As explained in detail above, this is insufficient.

244. For the same reasons, auxiliary request I.2 was also to be rejected, by which, conversely, the plaintiff was to be ordered to submit the same offer to the defendants.

245. The further auxiliary request I.3 was also to be rejected. The request is aimed at ordering the applicant to submit a licence agreement offer with the content according to Annex VB-FC16. The plaintiff is not obliged to do so because, on the one hand, the lump sum licence amount offered for the acts of use in the EPC contracting states, Japan and the USA was again only calculated on the basis of the IDC data, but not on the basis of its own disclosed acts of use. Moreover, it is not in accordance with the practice of business transactions [...] to have another court, in this case the Beijing Intellectual Property Court, determine the licence fee. This means that, on the one hand, the key points of the contract are still open and, on the other hand, both parties ultimately agree in their arguments that only a comprehensive dispute resolution through a global FRAND rate determination is in line with customary practice. The defendants have also not put forward any points of view that could nevertheless justify a partial determination of the licence rate only for certain global regions. The mere reference to the greater local proximity of a court to the respective submarket is not sufficient for this. The calculation on the basis of the IDC data is also flawed by the other alternative applications submitted within the alternative application.

246. Insofar as the defendants request, in the alternative to the requests of request group I with request group II.1, to make findings on a claim to a licence and its amount in the territory of the EPC contracting states, the request was to be rejected for the simple reason that a provision limited to the EPC territory does not meet FRAND criteria (see above).

247. Insofar as the defendants further request with the auxiliary request II.2 that the defendants

"subject to the existence of a FRAND commitment" to again pay a flat licence rate limited solely to the EPC contracting states, the request had to be rejected for the same reasons as request II.1.

248. The auxiliary request pursuant to request II.3, to oblige the applicant to cooperate fully in order to bring about a FRAND licence on the terms set by your court, is already too vague and therefore cannot be granted as an unenforceable request.

249. The further auxiliary application group III. was not allowable for the simple reason that the defendants have no need for legal protection in the requested abstract findings. The defendants themselves argue that they are entitled to a FRAND licence. They were required to assert this with suitable groups of applications, which they did not succeed in doing. The defendants have no noteworthy legal interest in further abstract findings, such as those pursued with the present group of applications, since they have not yet behaved in accordance with the requirements of the ECJ's case law, as explained above. It can therefore be left open in the present case whether a determination of a specific FRAND licence rate by the court - even without a FRAND counterclaim by the implementer - can be considered, for example, if both parties have each submitted a (counter)offer within the FRAND corridor and then cannot agree on overcoming the remaining differences through a third party as considered by the ECJ (cf. ECJ loc. cit. para. 68). Moreover, application III.1(e) again suffers from the fact that the plaintiff is to be ordered to submit an offer limited to the EP territory only, although both parties agree that only a global licence will finally end their disputes.

250. The further groups of claims asserted in the alternative, which were the subject of the counterclaim of 22 December 2023, must be dismissed for the same reasons as auxiliary claim group III.1. Mere declarations are requested

(application (i), (iii), (vi), (vii), (viii), (ix)) or the applications are too vague (application (ii), (v)) or, again in accordance with the grounds of the counterclaim, relate only to the EP territory (application (ii), (iv), (v), (x)). This is because the defendants only switched to a global licence regulation following the explicit reference by court order.

Form of order sought by the plaintiff in the FRAND counterclaim

251. The plaintiff's applications "in the context of the counterclaim" were made subject to the condition that the defendants' counterclaim applications were not rejected and that the defendants behaved like parties willing to take a licence in the negotiations with the plaintiff that were the subject of the dispute. This intra-procedural condition did not materialise.

Value of the claim

252. The panel sets the amount in dispute at [...] - in settlement of the application for review filed against the judge-rapporteur's order pursuant to Rule 333 of the Rules of Procedure. At the hearing, the parties considered an amount of [...] to be appropriate. However, it must be seen in the present case that the plaintiff, with its applications pursued in the context of the FRAND counterclaim, is concerned with the enforcement of a flat-rate licence of [...] deemed appropriate, while the defendants are concerned with having to pay only [...] and averting the obligation to pay the additional amount claimed by the plaintiff [...]. Since the parties have comprehensively submitted the global licence dispute for decision by their mutual applications within the framework of the FRAND counterclaim, the value in dispute could not be determined with regard to the patent in suit only. Accordingly, only the [...] amount in dispute could be determined.

DECISION

A.

I. It is established that the defendant has infringed European Patent No. 2 568 724 B1.

II. The defendants are sentenced,

t h e r e a r e t h e m e a s u r e ,

1. Radio communication devices

which can be configured to transmit a reference signal with a transmission bandwidth in a given system bandwidth, wherein both ends of the same [system bandwidth] are assigned control channels and the transmission bandwidth is between the control channels, or to transmit reference signals with a low bandwidth with frequency hopping, and the radio communication devices comprise: an assigning unit configured to assign the reference signals to frequency resources; a transmitting unit configured to transmit the assigned reference signals,

in the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden, or to place them on the market or use them, or to import or possess them for these purposes,

where

the transmission bandwidth varies in the given system bandwidth, and the allocation unit allocates the reference signals such that the reference signals are allocated to frequency resources each having the small bandwidth which is invariable regardless of changes in the transmission bandwidth, the frequency resources being uniformly distributed in a frequency band of the transmission bandwidth in accordance with the change in the transmission bandwidth.

(direct infringement of device claim 1)

2. Devices suitable for performing a radio communication method which can be configured to transmit a reference signal with a transmission bandwidth in a given system bandwidth, both ends of the same control channels being assigned and the transmission bandwidth being between the control channels, or to transmit reference signals with a low bandwidth with frequency hopping,

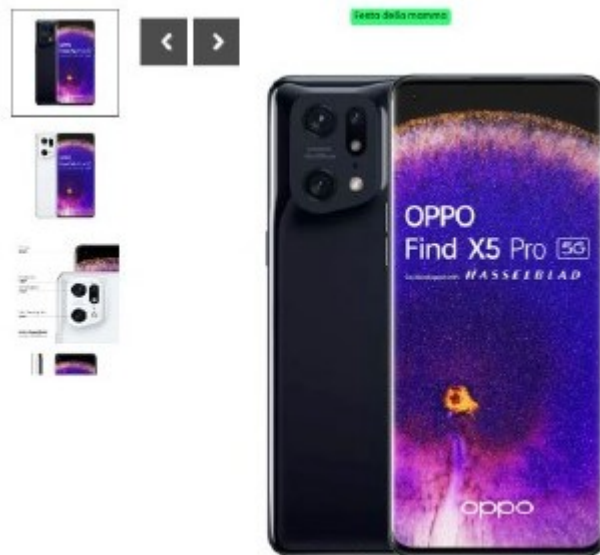
in the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Kingdom of Sweden,

wherein the radio communication method comprises the following steps:

assigning the reference signals to frequency resources; and
Sending the assigned reference signals,
characterised in that the transmission bandwidth in the given system
bandwidth varies, and
the reference signals are allocated frequency resources, each of which has the
small bandwidth that is invariable regardless of changes in the transmission
bandwidth, the frequency resources being distributed evenly in a frequency
band of the transmission bandwidth in accordance with the change in the
transmission bandwidth.

(indirect infringement of procedural claim 13)

Devices in the aforementioned sense include, in particular, 4G-capable smartphones such as the OPPO Find X5 Pro



and 4G-enabled smartwatches, such as the 4G-enabled smartwatch



OPPO Watch 46 mm LTE - Smartwatch (AMOLED Display, GPS, Bluetooth 4.2, Wear OS by Google, VOOC Schnellladefunktion, 5 ATM), Schwarz

Besuche den OPPO-Store

4.1 ★★★★★ 86 Sternbewertungen

411 €

Vorauszahlung der Importgebühren erwünscht -
Preisangaben inkl. USt. Abhängig von der Lieferadresse kann die USt. an der Kasse variieren. Weitere Informationen.

Nutzen Sie die Monatsabrechnung und bezahlen Sie erst im nächsten Monat

Größe: 46mm
Farbe: Schwarz

Marke	OPPO
Modellname	Watch 46 mm (LTE)
Set	eSIM
Farbe	Schwarz
Besonderes Merkmal	GPS
Form	Quadratisch

▼ Mehr anzeigen

Info zu diesem Artikel

- Das Dual-Burne-Display ist so konzipiert, dass Sie Ihre Inhalte aus jedem 90-Grad-Winkel bequem anzeigen können.
- Die Oppo Watch mit 46 mm kann rechtzeitig Regen oder Wasser

In the event of any infringement of the orders under clause 1 and/or clause 2, the defendants shall pay a penalty payment of EUR 1,000 each.

III. Orders the defendants to pay, at their own expense

1. to recall the products mentioned under No. II. from the distribution channels;
2. to permanently remove the products mentioned under No. II. from the distribution channels;
3. to destroy the products mentioned under No. II;

IV. The defendants are sentenced,

1. to provide the plaintiff, in a list structured for each month of a calendar year and by infringing products in electronic form, which can be analysed with the aid of a computer, with information from 17 December 2014 on the products referred to in No. II. on
 - a) the origin and distribution channels of the products mentioned under No. II;
 - b) the quantities delivered, received or ordered and the prices paid for the products mentioned under No. II;
 - c) the identity of all third parties involved in the distribution of the products mentioned under No. II;

2. to disclose to the plaintiff its accounts to prove the information provided pursuant to No. IV.1. plus the information on the profit realised by providing the following documents for each month of a calendar year and for each infringing product in electronic form which can be analysed with the aid of a computer:

- a) Invoices - or, if these are not available, delivery notes - of the individual deliveries, itemising the respective deliveries according to quantities offered, offer periods, prices of the goods offered and type designations as well as names and addresses of the commercial recipients of the sales offers for all products sold or otherwise disposed of;
- b) Evidence of the advertising carried out, including evidence of these advertising activities, breaking down the advertising carried out by advertising medium, its distribution, the distribution period and the distribution area;
- c) Proof of costs, with a breakdown of costs by individual cost factors and the profits realised;
- d) Invoices - or, if these are not available, delivery notes - and corresponding statements of all costs incurred, on which the defendants rely in calculating their profits;

the accuracy of which is audited and confirmed by a sworn auditor appointed by the plaintiff at the defendant's expense, whereby the auditor is obliged to maintain confidentiality vis-à-vis the plaintiff beyond the above-mentioned information;

V. It is established that the defendants are jointly and severally liable to compensate the plaintiff for any damage that Panasonic Intellectual Property Corporation of America has suffered as a result of actions pursuant to No. II. since 17 December 2014 and that the plaintiff has suffered since 29 July 2016 and will suffer in the future.

VI. The defendants are ordered as joint and several debtors to pay the plaintiff an amount of EUR 250,000.00 as provisional damages;

VII. In all other respects, the action for infringement is dismissed.

- B. The action for annulment is dismissed.
- C. The FRAND counterclaim is dismissed.
- D. Orders the defendants to pay the costs.
- E. The amount in dispute is set at € [...].
- F. The orders are only enforceable

with regard to A.II.1, A.II.2, A.III. (omission/recall/removal/destruction)

- after the plaintiff has provided security in favour of the defendant in the form of a deposit in the amount of [...] or a written, irrevocable, unconditional and unlimited guarantee from a credit institution authorised to do business in the territory of a Member State of the European Union for [...];
- after the claimant has notified the court which part of the orders it intends to enforce and has submitted a certified translation of the orders into the official language of the Contracting Member State in which enforcement is to take place and after the defendants have been served with the notification and the (respective) certified translation.

Mannheim on 22 November 2024 NAMES

AND SIGNATURES

Presiding Judge Prof Dr Tochtermann	Peter Michael Dr. Tochtermann Digital signed by Peter Michael Dr Tochtermann Date: 2024.11.19 17:35:35 +01'00'
Legally qualified judge Böttcher	Dirk Andreas Cooper Digital signed by Dirk Andreas Böttcher Date: 2024.11.19 19:11:01 +01'00'
Legally qualified judge Brinkman	Edger Frank BRINKMAN Digitally signed by Edger Frank BRINKMAN Date: 2024.11.21 10:01:00 -03'00'
Technically qualified judge Loibner	Klaus Loibner Digitally signed by Klaus Loibner Date: 2024.11.19 21:19:14 +01'00'
For the Deputy Registrar: Kranz, Clerk LK Mannheim	ANDREAS MICHAEL Kranz Digitally signed by ANDREAS MICHAEL wreath Date: 2024.11.21 14:53:11 +01'00'

INFORMATION ON THE APPOINTMENT:

An appeal against this decision may be lodged with the Court of Appeal within two months of notification of the decision by any party whose petitions were unsuccessful in whole or in part (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RP).

INFORMATION ON ENFORCEMENT (ART. 82 EPGÜ, ART. 37 PARA. 2 EPGS, R. 118.8, 158.2, 354, 355.4

VERFO):

A certified copy of the enforceable judgement is issued by the Deputy Registrar at the request of the enforcing party, R. 69 RegR.

This decision was announced at a public meeting on 22 November 2024.

Presiding Judge Prof Dr Tochtermann

Peter
Michael Dr
Tochterman
n

Digitally signed by
Peter Michael Dr
Tochtermann
Date: 2024.11.22
10:08:37 +01'00'

